NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

NYU | LAW

EMILY J. SACK
Adjunct Professor of Law

Professor of Law, Roger Williams University School of Law

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June 12, 2023

RE: Ruth Sangree, NYU Law '24

Your Honor:

I am writing to give my highest recommendation for Ruth Sangree, who is applying for a clerkship position in your chambers. I know Ruth well, and I am confident that she would make an excellent contribution to the work of the court.

I am a tenured full professor at Roger Williams University School of Law, and also serve as an adjunct professor of law at New York University School of Law. Ruth was a student in my Domestic Violence Law seminar at NYU this past fall. The seminar was small, and so I got to know the students and their work quite well. They were required to write a lengthy paper with original research. Ruth has a strong interest in American Indian Law, and her paper for my seminar focused on the impact of Violence Against Women Act provisions designed to address the limits of tribal jurisdiction over domestic violence crimes against Native American women.

I worked closely with Ruth on this paper, reviewing and meeting on various drafts. In a class of extremely strong students, Ruth stood out in several ways. First, she is a highly gifted writer, and I was struck by both the sophistication and clarity of her writing. She is also an excellent researcher. Part of the paper was devoted to the history of the Supreme Court's treatment of tribal criminal jurisdiction; though this is an area with which I am quite familiar, Ruth delved deeper into this history and provided the type of close and insightful readings of opinions that I had not seen before from a student. As you will note from her resume, Ruth was a Fulbright Junior Research Scholar in Korea where she conducted an independent research project on "comfort women." She clearly is experienced in critical analysis and is a top-notch researcher and writer. Further, Ruth brings a deep intellectual curiosity to her work and enjoys debating and discussing legal ideas. I saw this both in her active engagement in class discussion, as well as in her paper. After discussing the problems with limited tribal jurisdiction over domestic violence crimes and concluding that the VAWA provisions did not go far enough in addressing them, Ruth made several thoughtful proposals, emphasizing tribal sovereignty and the need for tribes to be able to reclaim jurisdiction over crimes committed on their land. These proposals were well researched, thoughtful, and original.

Ruth is committed to public service, and as you will see from her resume, she has held several public interest positions and internships. These include working at the Public Defender's Office in New Orleans last summer, and at Public Justice this past fall. This coming summer she will be interning at the Brooklyn Defenders. I am most familiar with her ongoing work with the NYU-Yale American Indian Sovereignty Project where she has been researching and drafting

various amicus briefs on relevant topics. In addition to her interest in criminal law and in tribal law and advocacy, I know that she has a strong interest in mental health and disability law; next year she will be a student advocate with the NYU's Disability Rights and Justice Clinic.

Ruth has been able to develop and utilize these exceptional research, writing, and analytical skills in additional academic and professional positions. She currently serves as Senior Articles Editor of the NYU Review of Law & Social Change, and prior to law school she worked as special assistant to the Director of the Brennan Center for Justice's Justice Program. In that position, she had a number of research and writing assignments, including a field project in El Paso, TX municipal courthouses on the impact of court-imposed fees and fines on litigants. For this project, she both collected quantitative data and conducted interviews with judges and court personnel.

In addition to her strong academic skills, Ruth has the confidence to engage with difficult legal and policy issues. I think all of her experiences, and particularly her Fulbright project and the field research at the Brennan Center, demonstrate Ruth's tenacity, initiative, and dedication to her work. As a former law clerk, I believe I have a good sense of the qualities that are critical to succeed in this position, and quite simply, Ruth possesses them all. Finally, Ruth is a mature and lovely person, who possesses the highest integrity and professionalism. She is truly a superlative candidate, and I hope that you will give her your closest consideration. I would be happy to provide any further information that would be helpful to you, and I can be reached at 401-254-4603 or ejs2163@nyu.edu. Thank you very much for your attention.

Sincerely,

Emily J. Sack

Emily J. Sack
Adjunct Professor of Law
NYU School of Law
Professor of Law
Roger Williams University School of Law

ORLEANS PUBLIC DEFENDERS
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Dear Judge:

My name is Abbee Cox, and I'm a current public defender and former clerk. I clerked for the Honorable Pamela A. Harris of the U.S. Court of Appeals for the Fourth Circuit (2017 to 2018) and the Honorable Jon S. Tigar of the U.S. District Court for the Northern District of California (2018 to 2019), before joining the Orleans Public Defenders as a staff attorney in fall of 2019.

These experiences have given me insight into what one needs to succeed as a clerk, and especially as a clerk bound for a career serving the public interest. In light of this insight, I am humbled to have the opportunity to recommend Ruth Sangree for a clerkship in your chambers. Simply put, Ruth is a shining star, destined to become an incredible public interest lawyer. I am confident that she would be an invaluable addition to any workplace, and she is particularly well-suited to the challenges and opportunities presented by a federal judicial clerkship.

I got to know Ruth when she was assigned to work with me for her clerkship at the Orleans Public Defenders (OPD) in the summer of 2022. Generally, OPD assigns a pair of clerks to a pair of attorneys, so that the clerks get a diversity of assignments, as well as the opportunity to observe and learn from different advocacy styles. The unspoken rationale is to try to ensure that all lawyers get at least one clerk who will make their lives easier instead of harder. Because of course, some clerks are more helpful than others—some require a lot of hand-holding and re-writing to make it through even simple assignments, while others are able to hit the ground running and make real contributions to their attorneys' perpetually unmanageable workloads. In a resource-strained jurisdiction where caseloads far exceed ABA standards for indigent defense, a good clerk can make the difference between effective and ineffective assistance of counsel, at least for the few precious weeks that we are lucky to enough to benefit from their help.

Ruth Sangree was not only a "good" clerk, she was an *excellent* clerk. I was constantly bragging to colleagues about Ruth's impeccable work product, and other lawyers who had the opportunity to interact with her that summer — whether in trainings, small group practice sessions for trial advocacy skills, or simply in passing in the courthouse or break room — would tell me with no small amount of jealousy that I had "won the clerk lottery." In fact, Ruth developed such an excellent reputation around OPD that, on multiple occasions over her too-short tenure with us, other lawyers sought me out to see if they might be able to "borrow" her for a while. All too aware of the stack of assignments I had already loaded her down with, I would tentatively ask Ruth if she had bandwidth for anything else. She never hesitated to enthusiastically accept. By the end of her two and half months with us, whenever any of our lawyers found themselves in a jam, needing exceptional assistance on a tight turnaround (a frequent occurrence in our chaotic courthouse), they knew Ruth Sangree was the first person they should ask.

ORLEANS PUBLIC DEFENDERS

The range of work Ruth did for me mirrors the remarkable breadth of tasks public defenders must juggle. Some of these tasks require highly-attuned interpersonal skills, while others demand a sharp analytical mind and robust legal-research-and-writing chops. Ruth excelled in every one of these respects. Indeed, I struggle to think of any to-do on my constantly expanding list that I didn't feel Ruth could already do as well or better than me, as a lawyer with three years of practice under my belt. Ruth's influence has greatly improved my advocacy, even long after her departure. Though her capacity is seemingly endless, my space in this letter is limited. So, with apologies for the run-on sentence, a sample of Ruth's contributions: She visited and interviewed numerous incarcerated clients; drafted successful bond reduction motions that, against great odds, freed some of those clients; worked with OPD's client services division to connect folks with reentry services; created thorough and thoughtful investigation plans; reviewed hundreds of hours of body-cam footage and thousands of pages of discovery (summarizing them in discovery digests that were without a doubt the best I've ever seen—in equal parts comprehensive and concise); conducted creative and wide-ranging research on novel legal issues; and made insightful edits to substantive motions, including multiple successful motions to quash.

Somehow, Ruth also managed to find time to observe court on a near-daily basis. Then, in her "spare time," she organized her fellow clerks to put on a wildly successful fundraiser, raising over $5000 for OPD's client welfare fund. This allows attorneys to send hygiene items and books to our incarcerated clients, affording them a silver of dignity in a system hellbent on denying the same. I imagine that, with her characteristic humility, Ruth might describe this initiative as a group effort, and it undoubtedly was. But equally unquestionable is the fact that Ruth spearheaded it, and that it never would have happened without her unobtrusive, yet compelling leadership style. Ruth is the type of person who other, less capable peers might understandably feel some degree of envy around—but for the fact that she is every bit as kind, friendly, and down-to-earth as she is whip-smart and exceedingly competent. As Your Honor will no doubt observe if you get the chance to interview her, Ruth Sangree is a very difficult person to dislike.

During my tenure at OPD, I've supervised around ten law clerks, and as a clerk in the Harris and Tigar chambers, I worked closely with many college and law school interns—several of whom have gone on to secure full-time federal clerkships after graduation. Among this illustrious group, Ruth is without a doubt the best intern or clerk I have been lucky enough to supervise.

In sum, Ruth Sangree is more than equipped to thrive as a judicial clerk and member of the bar. Her future clients are exceedingly lucky, as is her future judge. I would have loved to have Ruth as a co-clerk, and I am thrilled to welcome her into the profession as a peer. I give her my highest recommendation. Should Your Honor have any questions, I am humbly at your service.

Sincerely,

Abbee B. Cox

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May 26, 2023

To whom it may concern:

We write to provide our highest recommendation for Ruth Sangree, who has applied to a judicial clerkship in your chambers. We had the privilege to teach Ruth last semester in a seminar titled *Lawyers and Leaders: Professional Responsibility in Government and Public Interest Lawyers*. Ruth's performance in the class was superb. She was a pleasure to teach, and we are confident she would be just as much of an asset to have in chambers.

In class, Ruth regularly made insightful and thought-provoking comments, and she showed a true passion for the subject. It is not every day that a student shows such engagement in a professional responsibility course. But she did. From the start, she showed that she was not only reading the materials but also giving serious thought to her own positions, reflecting on any preconceived notions that she might have had coming in. She was open-minded but also willing to take positions on what she thought was right. Her eagerness was matched by humility and a willingness to listen to others, to incorporate their views, and to consider how they might affect her thinking. It's not just that Ruth showed that she will make an excellent lawyer; it's also that she made the class more fun and generative. She was a joy to teach.

Given her consistent and excellent contributions throughout the semester, we were not surprised that her final paper—on the pitfalls and potentials of government attorneys engaging in zealous advocacy—was brilliant. Her argument—that the model rules of professional conduct are sometimes an odd fit with the specific requirements of the responsibilities of prosecutors and public defenders—was nuanced. As the paper made clear, she has a keen analytical mind. Her writing is also strong and clear. Ruth did not dodge some of the harder questions that her argument raised; instead she addressed them head-on, thoughtfully but forcefully.

Ruth's personal characteristics also speak to why you would benefit from her service as a clerk. It was clear her classmates were very fond of her. We expect that your other clerks would feel the same way. She is also up to the task of dealing with some of the hard questions she will confront over the course of her clerkship; throughout the semester, she showed that she was more than capable of thinking through tough, knotty questions.

In sum, Ruth's performance in our course speaks to why you should offer her a clerkship position. She's smart, and she combines her intelligence with an eagerness and a willingness to learn and to grow. She's also a strong writer, with a keen ability to communicate her arguments thoughtfully and effectively. Ruth will be an excellent clerk, and she will go on to do significant things in our profession.

Respectfully,

Hakeem Jeffries & Debo P. Adegbile

NYU | LAW

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June 12, 2023

RE: Ruth Sangree, NYU Law '24

Your Honor:

It is with such pleasure that I write on behalf of Ruth Sangree, who has applied for a judicial clerkship. Ruth is one of those individuals whom you know has both the determination and passion to push boundaries and to make an impact in the profession. Her commitment to fairness and social justice forms the basis of all that she does. I have known Ruth since her first semester in law school. I found her to be curious, capable of seeing subtle connections. She was hard working and committed to excellence. I recommend her to you without hesitation.

Ruth offers the precise mix of talent and passion that one would expect from a first-rate young lawyer. I taught Criminal Law and it was everyone's first experience with online classes. Ruth's questions and insights during class demonstrated her eagerness to think deeply about critical questions. While many students are reluctant to speak up in their first semester, Ruth became one of the students I felt comfortable calling on because her answers and her questions routinely advanced and elevated the classroom discussion. She was an essential contributor in class discussions. I came to know Ruth well over that semester. I found that she not only enjoyed grappling with doctrine, but she also welcomed the opportunity to challenge conventional thinking and to question assumptions that she may have held when she entered law school. She quite comfortably and capably engaged with a wide range of materials that included cases, legal scholarship as well as interdisciplinary materials focused on social science and neuroscience. Even when the issues that we addressed had complex legal, social and political dimensions, she easily identified the key issues and carefully crafted arguments and positions that help to make sense of the complexity.

Ruth consistently brings clarity of thought to her work. She approaches her work with a high degree of care and creativity that gives you confidence that she will work hard to understand an issue and its nuances. When you challenge her to think hard about hard issues, she gives you the benefit of a sharp, critical mind. She not only excels in her ability to digest and grasp interdisciplinary materials, but she utilizes her analytical skills to raise probing questions. And, now, as a staff editor of NYU's Review of Law and Social Change journal, she has chosen to focus on legal issues that might contribute to questions of social justice.

Perhaps what sets Ruth apart is the time she spent abroad. After her first semester at the law school, Ruth opted to accept a Fulbright that gave her the opportunity to travel to Korea. This was a courageous choice – to interrupt her law school education, to leave the comfort of being part of a cohort of law students, to deepen her understanding of human rights more broadly. Her research project took a critical look at efforts to redress harms experienced by South Korean "comfort women." While she was conducting the research abroad, she stayed in contact with me and I loved watching the evolution of her thinking and insights. She not only began to understand both the cultural concerns and nuances, but she was also able to see parallels in the US. Ruth chooses to look at issues that others might be tempted to see as too tough, too intractable to tackle, and she rolls up his sleeves. She is a gifted student with an endlessly curious mind.

I hope that you will give her the opportunity to work with you and I am confident that you will find her work to be outstanding.

Sincerely,

Kim Taylor-Thompson

Kim A. Taylor-Thompson

WRITING SAMPLE COVER SHEET

The following memorandum was completed during my Fall 2022 externship with Public Justice. I have secured permission to use the memo as a writing sample, though some identifying information has been redacted. My supervisor reviewed an initial outline of the memorandum.

TO: Public Justice Supervisor

FROM: Ruth Sangree

DATE: November 29, 2022

RE: Applying the Excessive Fines Clause in a Juvenile Delinquency Context

1. Summary

You asked me to research if courts have applied the Excessive Fines Clause ("EFC") in juvenile delinquency proceedings, in Michigan or elsewhere. I could not find any relevant caselaw in Michigan or the Sixth Circuit that discusses the Excessive Fines Clause in juvenile delinquency proceedings, specifically. However, other jurisdictions, namely California and Alaska, have discussed the Excessive Fines Clause in a juvenile justice context. You also asked whether courts had applied the "fundamental fairness" test to the Excessive Fines Clause to determine whether the Excessive Fines Clause applies in juvenile court. I could not find caselaw that applied the "fundamental fairness" test to the Excessive Fines Clause in the juvenile context, specifically.

2. Excessive Fines Clause in the Michigan Context

a. The Michigan Constitution's Excessive Fines Clause

The Michigan Constitution has a provision that mirrors the federal Excessive Fines Clause. Section 16 of the Michigan Constitution states that "[e]xcessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained."[1] In *People v. Antolovich*, the Michigan Supreme Court laid out several factors for analyzing whether a law violates Section 16.[2] In *Antolovich*, the

[1] MI. CONST. art. I, § 16 (West).
[2] 207 Mich. App. 714, 717; 525 N.W.2d 513, 515 (1994) (articulating a test that weighed several factors, including: the object designed to be accomplished, the importance and magnitude of the public interest, the circumstances and nature of the act for which it is imposed, the preventive effect of a particular kind of crime, and, in some instances, the defendant's inability to pay).

court found that the trial court did not have the authority to impose court costs on the defendant.[3] The court declined to apply the federal Excessive Fines Clause, but found the fine in question excessive under the state constitution, after articulating a balancing test for analyzing the relevant state constitutional provision.[4]

In the past two decades, the Court of Appeals of Michigan has called *Antolovich* into question. In *People v. Lloyd*, the Court of Appeals of Michigan considered whether a defendant had received meaningful notice of an order requiring payment of attorney fees.[5] The defendant, citing *Antolovich*, argued that the trial court had lacked authority to impose court costs.[6] The court denied the defendant's claim, and said that the *Antolovich* decision would not govern over a plain-language analysis of MCL 769.1k and MCL 769.34(6), which expressly empowered sentencing courts to order defendants to pay court costs.[7] The court's reasoning largely rested on *People v. Dunbar*, in which the Court of Appeals of Michigan had held that consideration of a defendant's ability to pay does not require a specific formality, and that the sentencing court only needs to "provide a general statement of consideration regarding the [defendant's] ability to pay."[8] Notably, not long after *Lloyd* was announced, *Dunbar* was overruled in *People v. Jackson*.[9] Furthermore, in 2019, the Court of Appeals of Michigan stated that, regardless of *Lloyd*, they were still bound to follow the ruling in *Antolovich* and that, even if they weren't,

[3] *Id.* at 715
[4] *Id.* at 716.
[5] 284 Mich. App. 703, 704; N.W.2d 347, 349 (Mich. Ct. App. 2009).
[6] *Id.* at 710.
[7] The court argued that the plain language of MCL 769.1k and MCL 769.34(6) had not codified *Antolovich*, but rather had changed the law. As part of their reasoning, the court noted that MCL 769.1k was enacted over 12 years after the *Antolovich* decision. *See id.*
[8] *Id.* (citing People v Dunbar, 264 Mich. App. 240, 254-255; 690 N.W.2d 476 (2004)).
[9] People v. Jackson, 483 Mich. 271, 289; 769 N.W.2d 630, 640 (Mich. 2009).

"justice dictates that there must be some basis for determining whether a discretionary decision like the amount of a fine constitutes an abuse of that discretion."[10]

b. Courts Applying the Michigan Excessive Fines Clause Using Federal Principles

Michigan courts have, in general, not directly invoked the federal Excessive Fines Clause in cases involving fees, fines, and restitution. Instead, various Michigan courts have analyzed the state's equivalent using federal principles, noting the state equivalent's similarity to the protections of the Eighth Amendment.[11] A key example of this can be found in *In re Forfeiture of $25,505*.[12] Operating in a pre-*Timbs v. Indiana* world, the Court of Appeals noted that the Excessive Fines Clause did not necessarily apply to the states.[13] The court then analyzed whether the fine in question was excessive under the Michigan Constitution, relying on federal case law.[14] Now that *Timbs* has explicitly extended the Excessive Fines Clause to the states,[15] there might be space to argue that state courts should apply the federal Excessive Fines Clause, explicitly.

3. *Austin v. United States* in the Juvenile Delinquency Context

a. Overview of *Austin v. United States*

You asked me to research whether *Austin v. United States* has been applied in the juvenile delinquency context.[16] *Austin* involved an individual who had been convicted of cocaine

[10] People v. Brunke, Nos. 341160 & 341161, 2019 WL 488797, at *3 (Mich. Ct. App. Feb. 7, 2019).
[11] *See, e.g.*, *In re* Forfeiture of 5118 Indian Garden Rd., 654 N.W.2d 646, 648–49 (Mich. Ct. App. 2002) ("These factors dovetail, to a certain extent, with the United States Supreme Court's statement in United States v. Bajakajian, 524 U.S. 321, 337 (1998). . . ."); *Antolovich*, 525 N.W.2d at 515 (declining to determine whether the fine violated the Eighth Amendment of the United States Constitution, but invalidating the fine as excessive under the state constitution).
[12] 560 N.W.2d 341, 347 (1996).
[13] *Id.*
[14] *Id.*
[15] Timbs v. Indiana, 139 S. Ct. 682, 688 (2019).
[16] Austin v. United States, 509 U.S. 602 (1993).

possession, after which the government filed an *in rem* action seeking forfeiture of his mobile home and auto shop. The Supreme Court, ruling in favor of Austin, held that civil forfeiture proceedings are "subject to the limitations of the Eight Amendment's Excessive Fines Clause.[17] The court further explained that any economic sanction can be considered a "fine" under the Excessive Fines Clause if it exists "in part to punish."[18] Redacted co-worker 1 ["RC"] noted that we have typically applied this test when we want to argue that things not expressly labeled fines—for example, fees, surcharges, or restitution—should be subject to the EFC's protections. RC also thinks that the same test should apply to determine whether the EFC applies to certain proceedings, such as penalties issued in civil or quasi-criminal contexts, and that this could be relevant in a juvenile context, as well.

b. *Austin* in Michigan Caselaw

Based on RC's initial search of Michigan caselaw, he asked me to look at the applicability of *People v. Hana*, which he thought might be relevant.[19] Although I don't think it's entirely on point for EFC purposes, as I explain below, I have included analysis of the key issues. In *Hana*, the main question before the Supreme Court of Michigan was whether the full panoply of protections provided by the Fifth and Sixth Amendments of the United States Constitution applied to both the dispositional and adjudicative phases of a juvenile waiver hearing.[20] The

[17] *Id.* at 622.
[18] *Id.* at 610.
[19] 443 Mich. 202, 225–27; 504 N.W.2d 166, 177-178 (1993).
[20] Under Michigan law, on the motion of the prosecutor, and after a hearing, the juvenile court may waive jurisdiction for the defendant to face trial as an adult, if the child is at least 14, accused of a felony (or any other offense, whether or not designated a felony, that is punishable by more than one year's imprisonment) and if the court finds that (1) there is probable cause to believe the child committed the offense alleged and (2) the best interests of the child and the public would be served thereby. *See* MCL Sec. 712A.4.

court concluded that the constitutional protections that *Kent*[21] and *Gault*[22] had extended to juvenile proceedings apply in full force to the adjudicative phase of a juvenile waiver hearing.[23] However, the court declined to apply them to the dispositional phase of a waiver hearing.[24] The court interpreted the purpose behind the Probate Code and the court rules to favor individualized tailoring of a juvenile's sentence with emphasis on both the child's and society's welfare.[25]

c. Other Caselaw Applying *Austin* in the Juvenile Context

Other state courts have addressed *Austin* to some degree in juvenile cases. In *State v. Niedermeyer*, a juvenile driver's license was revoked by the state following the juvenile's arrest for underage consumption of alcohol.[26] The trial court reversed the revocation, declaring that revocation law unconstitutional.[27] The Alaska Supreme Court agreed with the trial court, and in their opinion emphasized that the statute was punitive in nature and did not provide the defendant with procedural due process.[28]

California courts have also discussed *Austin* in the juvenile context. In *In re J.C.*, the defendant argued that lifetime sex offender registration for juveniles is cruel and unusual punishment under the Eighth Amendment of the United States Constitution.[29] The Third District Court of Appeal declined to rule on whether rationales for sex offender registration applied to juveniles and held that public disclosure aspect of juvenile sex offender registration did not

[21] Kent v. United States, 383 U.S. 541, 556 (1966) (holding that waiver procedures for juveniles to criminal courts were "a 'critically important' action determining vitally important statutory rights of the juvenile.")
[22] *In re* Gault, 387 U.S. 1 (1967) (finding that the Fifth and Sixth Amendment rights recognized in adult criminal proceedings applied to juvenile proceedings).
[23] *Hana*, 443 Mich. at 225.
[24] *Id.* at 204.
[25] *Id.* at 226-227.
[26] 14 P.3d 264 (2000 Alas.).
[27] *Id.* at 266.
[28] *Id.* at 269–270
[29] 13 Cal. App. 5th 1201 (Cal. Ct. App. 2017).

render registration requirement punitive.[30] The court drew its reasoning from *In re Alva*, where a unanimous California Supreme Court held the mere registration of sex offenders was not a punitive measure subject to the proscription against cruel and/or unusual punishment.[31] In applying the *Austin* test, the court said that the civil sanctions are punishment covered by the Eighth Amendment when they "can only be explained as also serving either retributive or deterrent purposes," rather than "*solely* [serving] a remedial purpose."[32]

4. **Other Relevant 'Excessive Fines Clause' Case Law**

a. California

The California Second District Court of Appeal made a particularly strong stance against the criminalization of poverty, with implications for juvenile justice, in *People v. Duenas*.[33] The case applies a due process framework and does not include a specific Excessive Fines Clause analysis. I have included the case because of its strong anti-criminalization language and to provide context for other court's discussion of its holding. Although this case did not take place in juvenile court, it did involve fines resulting from juvenile citations that the defendant received as a teenager, and was unable to pay once she reached adulthood, eventually resulting in the revocation of her license and several periods of incarceration.[34] The court considered whether imposing fees and fines on the defendant without considering her ability to pay violated state and federal constitutional guarantees against punishing individuals for their poverty, and answered with a resounding yes.[35] Because poverty was the only reason the defendant could not pay

[30] *Id.*
[31] 33 Cal. 4th 254, 260; 92 P.3d 311, 312 (Cal. 2004).
[32] *Id.* at 283.
[33] 30 Cal. App. 5th 1157 (Cal. Ct. App. 2019).
[34] At the time the case was decided, Ms. Duenas was a young, homeless mother of several young children living on public assistance. The court also noted that each of Ms. Duenas's prior arrests and convictions had resulted from her initial inability to pay to restore her suspended license when she was a teenager. *Id.* at 1160-1161.
[35] *Id.* at 1160.

restitution and court costs, using the criminal process to collect that money would have been a violation of due process under the California Constitution's Article I, § 7 and the federal 14th Amendment.[36] The court stated that due process of law requires the trial court to conduct an ability to pay hearing and ascertain a defendant's present ability to pay before it imposes court facilities and court operations assessments under the specific provisions at issue.[37] Although that particular provision required the trial court to impose a restitution fine, the trial court was also required to stay the execution of the fine until and unless the state demonstrates that the defendant has the ability to pay the fine.[38]

While some subsequent courts have distinguished *Duenas* by limiting it to its facts, other courts have more directly criticized the decision, and – as it relates to this memo's topic – applied an Excessive Fines Clause analysis in similar situations.[39] In *People v. Aviles*, the Fifth District Court of Appeal found that the Excessive Fines Clause was more appropriate than a due process argument for an indigent defendant to challenge the imposition of fees, fines, and assessments.[40] In *People v. Hicks*, the Fifth District Court of Appeal held that, in contrast to *Duenas*'s due process analysis, a due process violation must be based on a fundamental right, such as denying a defendant access to the courts or incarcerating an indigent defendant for nonpayment.[41]

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[36] *Id.* at 1168-1169.
[37] *Id.* at 1164.
[38] *Id.*
[39] *See* People v. Caceres, 39 Cal. App. 5th 917, 928–929 (Cal. Ct. App. 2019) (declining to apply *Duenas*'s "broad holding" beyond its unique facts). *See also* People v. Lowery, 43 Cal. App. 5th 1046, 1055 (2020), *review denied* Mar. 11, 2020 (Stating that the "appellants were not caught in an unfair cycle, and they could have avoided the present convictions regardless of their financial circumstances.").
[40] 39 Cal. App. 5th 1055, 1069 (Cal. Ct. App. 2019).
[41] 40 Cal. App. 5th 320, 322 (Cal. Ct. App. 2019). *See also* People v. Kingston 41 Cal. App. 5th 272, 279 (Cal. Ct. App. 2019) (finding *Hicks* to be "better reasoned" than *Duenas*); People v. Caceres, 39 Cal. App. 5th 917, 928 (Cal. Ct. App. 2019) ("In light of our concerns with the due process analysis in *Duenas*, we decline to apply its broad holding requiring trial courts in all cases to determine a defendant's ability to pay before imposing court assessments or restitution fines.").

5. Conclusion

Although I could not find any specifically on-point caselaw in Michigan or the Sixth Circuit that discusses the Excessive Fines Clause in juvenile delinquency proceedings, *Timbs v. Indiana* and related litigation in state courts marks a promising shift in the Excessive Fines Clause being utilized to challenge to court-imposed fees and fines.

Applicant Details

First Name	**Jada**
Middle Initial	**K**
Last Name	**Satchell**
Citizenship Status	**U. S. Citizen**
Email Address	**jsatche3@eagles.nccu.edu**
Address	**Address** Street **3000 Orchid St. Apt. 3349, 3349** City **Cary** State/Territory **North Carolina** Zip **27519** Country **United States**
Contact Phone Number	**2525653323**

Applicant Education

BA/BS From	**University of North Carolina-Greensboro**
Date of BA/BS	**December 2020**
JD/LLB From	**North Carolina Central University School of Law** **http://law.nccu.edu**
Date of JD/LLB	**May 4, 2024**
Class Rank	**5%**
Law Review/Journal	**Yes**
Journal(s)	**Science and Intellectual Property Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just the Beginning Organization**

Recommenders

Craig-Taylor, Phyliss
pcraigtaylor@nccu.edu
Corbett, Donald
dcorbett@nccu.edu
530-7159
Green, David
dgreen@nccu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jada Satchell
Durham NC, jadasatchell1@gmail.com, 252-565-3323

Dear Judge Walker,

My name is Jada Satchell, and I am a 3L at North Carolina Central University School of Law. I am contacting you to express my interest in the available clerkship position within your chambers. I learned about this opportunity through OSCAR. I understand that as a law clerk, you must have strong research and writing skills, in addition to a strong work ethic. I embody these characteristics due to my experience as a law clerk with both Legal Aid of North Carolina and Bressler, Amery & Ross, P.C., as well as my strong academic performance in law school.

As a result of my prior law clerk experience, I have the necessary skills to be a strong law clerk. With Legal Aid, my role on the domestic violence team challenged me in a number of ways to produce superior work, while working under tense deadlines. Due to the sensitive nature of domestic violence hearings, time restraints were placed on everything I worked on, and I consistently produced superior work within the time allotted. During my 2L Legal Letters class, I had the opportunity to conduct extensive research on Title VII sexual harassment claims and draft an interoffice memorandum. Within the memorandum, I addressed matters such as vicarious liability, the factors a federal court would consider when determining whether an employer's actions are deemed severe and pervasive, and the sufficiency of the employer's remedial measure. Most recently, with Bressler, I have gained knowledge concerning the Fair Debt Collection Practices Act ("FDCPA"), the Federal Interpleader Statutes, and the Financial Industry Regulatory Agency ("FINRA") through drafting various memorandums, attending arbitrations, and pre-conference hearings. Through these assignments, I have sharpened my already distinguished skills in time management, efficiency, and effective research. I am a first-generation law student, and I have worked since I was thirteen years old while consistently exuding academic excellence and it is from both my academic and personal life experiences, I am confident that I would be a valuable law clerk.

I am specifically interested in a clerkship with you, as I would gain a deeper understanding of the appropriate application of the law in a just and fair manner. I am extremely interested in furthering my experience in both civil and criminal law, as it is important to me to be well-rounded in the legal profession. The federal court system operates to ensure uniformity of the law and I understand your decisions help mold and set precedents that are the basis for many legal claims. It is extremely important that a law clerk accurately conveys the decisions of the court, aid in judicial efficiency, and provide an in-depth understanding of the law. Due to my prior experiences, work ethic, and love for the law, I embody the characteristics needed for a federal law clerk. It would be an honor to work alongside you, and to be able to learn firsthand how dynamic and complex the law can be in protecting the rights of citizens. I am confident that I can be an exceptional law clerk and I welcome the opportunity to speak with you at your earliest convenience so I can highlight the experiences in my enclosed resume. Thank you in advance for taking the time to consider my application.

JADA SATCHELL

Greenville, NC - 252-565-3323 - jadasatchell1@gmail.com

EDUCATION AND TRAINING

North Carolina Central University Durham, NC
Juris Doctor Expected in 05/2024
Honors: Title III Scholar, 2021, Dean's List 2022-23, Science and Intellectual Property Law Review Publication Award Recipient **GPA: 3.48/4.00**

The University of North Carolina At Greensboro Greensboro, NC
Bachelor of Arts: Political Science 12/2020
Minor in African Diaspora Studies **GPA: 3.43/4.00**
Honors: Dean's List Honoree Fall 2019, Spring 2020, Fall 2020; Spartan Scholar, 2017-2020; Chick-Fil-A Remarkable Leadership Scholar, 2020; UNCG Spartan Scholarship Recipient, 2017-2020

EXPERIENCE

NCCU SCHOOL OF LAW Durham, NC
Civil Procedure Tutor 05/2022 to 05/2024
- Assisted over fifty students per semester with understanding complex legal issues as it relates to the Federal Rules of Civil Procedure.
- Regularly collaborated with the assigned professor to ensure consistency in educating students.
- Created model responses and adapted learning materials to aid in student retention.

BRESSLER, AMERY & ROSS, P.C. Birmingham, AL
Summer Associate 05/2023 to 07/2023
- Attended negotiations, depositions, arbitrations, conferences, and other client-related activities with the Labor and Employment, Securities, and Insurance practice groups.
- Produced legal memorandums and research reports for actions challenging FINRA dealing with Financial Regulatory claims, the FDCPA dealing with consumer debt protection, and Federal Interpleader actions associated with insurance claims.
- Attended expungement trainings and conducted research on post-conviction relief for pro bono projects.

LEGAL AID OF NC Wilson, NC
MLK Intern 05/2022 to 07/2022
- Conducted over five client interviews weekly and regularly examined intake information for accuracy concerning domestic violence victims.
- Drafted memorandums, consent orders, engagement and closing letters for domestic violence victims, fair housing act claims, and consumer protection.
- Reviewed managing attorney's appellate briefs for accuracy.
- Attended and assisted in court proceedings for domestic violence victims and fair housing claims.

CHICK-FIL-A Greensboro, NC
Assistant Director of Operations 08/2018 to 06/2021
- Facilitated a remodel for a store grossing over six million dollars.
- Developed department performance goals and methods for achieving milestones.
- Evaluated key business metrics and recommended adjustments to policies and procedures.
- Improved training to reduce knowledge gaps and eliminate performance roadblocks.
- Coached 40 direct reports per shift on daily operations and company policies and procedures.
- Trained other directors and assistant directors of operations.

PROFESSIONAL AFFILIATIONS

Science and Intellectual Property Law Review
- Staff Editor, Editor-In-Chief 04/2023

NCCU Law 3L Class Council
- Vice-President 04/2023

Display Transcript

820783147 Jada K. Satchell
Jun 04, 2023 05:41 pm

This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Institution Credit Transcript Totals Courses in Progress

Transcript Data

STUDENT INFORMATION

Birth Date: Sep 07, 1999

Curriculum Information

Current Program
Juris Doctor
Program: Law
College: Law School
Campus: Regular
Major and Department: Law, Law

***Transcript type:GAPP is NOT Official ***

DEGREE AWARDED

Sought: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree
Major: Law

INSTITUTION CREDIT **-Top-**

Term: Fall 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	7000	P	Critical Thinking	P	1.000	0.000	
LAW	7010	P	Contracts I	C	2.000	4.000	
LAW	7030	P	Civil Procedure I	B+	3.000	9.990	
LAW	7050	P	Property I	B	3.000	9.000	
LAW	7080	P	Criminal Law	C-	3.000	5.010	
LAW	7121	P	Legal Reasoning & Writing	A-	3.000	11.010	

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA

Current Term:	15.000	15.000	15.000	14.000	39.010	2.786
Cumulative:	15.000	15.000	15.000	14.000	39.010	2.786

Unofficial Transcript

Term: Spring 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	7040	P	Torts I	B+	3.000	9.990	
LAW	7051	P	Property II	A-	3.000	11.010	
LAW	7111	P	Contracts II	B	3.000	9.000	
LAW	7122	P	Legal Reasoning & Writing II	A-	2.000	7.340	
LAW	7123	P	Intro to Legal Research	A	1.000	4.000	
LAW	7130	P	Civil Procedure II	A	3.000	12.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	53.340	3.556
Cumulative:	30.000	30.000	30.000	29.000	92.350	3.184

Unofficial Transcript

Term: Summer 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	4600	P	Negotiation (Eve)	A	3.000	12.000	
LAW	8018	P	Tech & Formation of Govt Contr	A	2.000	8.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	5.000	5.000	5.000	5.000	20.000	4.000
Cumulative:	35.000	35.000	35.000	34.000	112.350	3.304

Unofficial Transcript

Term: Fall 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	7041	P	Torts II	B+	2.000	6.660	
LAW	8000	P	Appellate Advocacy I	A-	3.000	11.010	

LAW	8010	P	Evidence	A	3.000	12.000
LAW	8019	P	Race In the Law	A-	3.000	11.010
LAW	8030	P	Constitutional Law I	A	3.000	12.000

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	14.000	52.680	3.762
Cumulative:	49.000	49.000	49.000	48.000	165.030	3.438

Unofficial Transcript

Term: Spring 2023

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	8013	P	Legal Letters-Empl Discriminat	A	2.000	8.000	
LAW	8130	P	Constitutional Law II	A	3.000	12.000	
LAW	8210	P	Criminal Procedure	B+	3.000	9.990	
LAW	8260	P	Law Journal I (SIPLR)	P	1.000	0.000	
LAW	9040	P	Business Associations	B+	4.000	13.320	
LAW	9290	P	Professional Responsibility	A	2.000	8.000	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	51.310	3.665
Cumulative:	64.000	64.000	64.000	62.000	216.340	3.489

Unofficial Transcript

TRANSCRIPT TOTALS (PROFESSIONAL (LAW)) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Transfer:	0.000	0.000	0.000	0.000	0.000	0.000
Overall:	64.000	64.000	64.000	62.000	216.340	3.489

Unofficial Transcript

COURSES IN PROGRESS -Top-

Term: Fall 2023

Subject	Course	Level	Title	Credit Hours
LAW	8020	P	Intestate Succession & Wills	3.000

LAW	8070	P	Family Relations	3.000
LAW	8223	P	Trademark Clinic I	3.000
LAW	9030	P	Sales/Secured Transactions	4.000
LAW	9558	P	ALA-Contracts,CivPro,CrimLaw	2.000

Unofficial Transcript

RELEASE: 8.7.1

Display Transcript

889648878 Jada K. Satchell
Dec 02, 2021 09:29 am

This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Transfer Credit Institution Credit Transcript Totals

Transcript Data

STUDENT INFORMATION

Birth Date: 07-SEP
Student Type: Continuing

Curriculum Information

Current Program
Bachelor of Arts
Program: BA - Arts and Sciences
College: College of Arts and Sciences
Major and Department: Political Science, Political Science
Major Concentration: Pre-Law Political Science
Minor: African American Studies

***Transcript type:GAPP Graduate School Grad Appl is NOT Official ***

DEGREE AWARDED

Degree Awarded: Bachelor of Arts **Degree Date:** Dec 11, 2020

Curriculum Information

Primary Degree
Program: BA - Arts and Sciences
College: College of Arts and Sciences
Major: Political Science
Major Concentration: Pre-Law Political Science
Minor: African American Studies

TRANSFER CREDIT ACCEPTED BY INSTITUTION -Top-

21-OCT-16: Advanced Placement Program

Subject	Course	Title	Grade	Credit Hours	Quality Points	R
ENG	101	College Writing I	T	3.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	3.000	3.000	3.000	0.000	0.00	0.00

Unofficial Transcript

21-OCT-16: Advanced Placement Program

Subject	Course	Title	Grade	Credit Hours	Quality Points	R
PSY	121	General Psychology	T	3.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	3.000	3.000	3.000	0.000	0.00	0.00

Unofficial Transcript

08/16-12/16: Pitt CC

Subject	Course	Title	Grade	Credit Hours	Quality Points	R
SOC	101	Introduction to Sociology	T	3.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	3.000	3.000	3.000	0.000	0.00	0.00

Unofficial Transcript

INSTITUTION CREDIT -Top-

Term: Fall 2017

College: College of Arts and Sciences
Major: Political Science
Student Type: New First Time
Academic Standing: Academic Good Standing (Combined Academic Standing)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
CST	105	Greensboro Main	UG	Intro to Communication Studies	B+	3.000	9.90			
HIS	208	Greensboro Main	UG	Tpcs:European Expsn & Empires	B+	3.000	9.90			
MUS	241	Greensboro Main	UG	Music Appreciation	B-	3.000	8.10			
PSC	200	Greensboro Main	UG	American Politics	B	3.000	9.00			
REL	223	Greensboro Main	UG	Hinduism	A-	3.000	11.10			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	48.00	3.20
Cumulative:	15.000	15.000	15.000	15.000	48.00	3.20

Unofficial Transcript

Term: Spring 2018

College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
CCI	201	Greensboro Main	UG	Intro to Greek Civilization	B	3.000	9.00			
ENG	105	Greensboro Main	UG	Introduction to Narrative	B+	3.000	9.90			
MAT	115	Greensboro Main	UG	College Algebra	B	3.000	9.00			
PSC	240	Greensboro Main	UG	The International System	C+	3.000	6.90			
PSC	260	Greensboro Main	UG	Intro to Comparative Politics	B	3.000	9.00			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	43.80	2.92
Cumulative:	30.000	30.000	30.000	30.000	91.80	3.06

Unofficial Transcript

Term: Fall 2018

College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
ENG	110	Greensboro Main	UG	World Literature in English	A	3.000	12.00			
NTR	213	Greensboro Main	UG	Introductory Nutrition	B-	3.000	8.10			
PSC	301	Greensboro Main	UG	Research Meth in Political Sci	B-	3.000	8.10			
PSC	316	Greensboro Main	UG	Judicial Procedure	B-	3.000	8.10			
SPA	101	Greensboro Main	UG	Beginning Spanish I	B+	3.000	9.90			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	46.20	3.08
Cumulative:	45.000	45.000	45.000	45.000	138.00	3.06

Unofficial Transcript

Term: Spring 2019

College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
CHE	101	Greensboro Main	UG	Introductory Chemistry	C+	3.000	6.90			
CHE	110	Greensboro Main	UG	Introductory Chemistry Lab	A	1.000	4.00			
PSC	270	Greensboro Main	UG	Introduc to Political Theory	B	3.000	9.00			
PSC	280	Greensboro Main	UG	Introduction to Law	B	3.000	9.00			
PSC	336	Greensboro Main	UG	Women And the Law	B	3.000	9.00			
SPA	102	Greensboro Main	UG	Beginning Spanish II	A-	3.000	11.10			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	49.00	3.06
Cumulative:	61.000	61.000	61.000	61.000	187.00	3.06

Unofficial Transcript

Term: Fall 2019

College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)
Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
ATY	449	Greensboro Main	UG	Gender Archaeology	A	3.000	12.00			
GES	103	Greensboro Main	UG	Introduction to Earth Science	B+	3.000	9.90			
PSC	210	Greensboro Main	UG	Intro to Public Policy	A-	3.000	11.10			
PSC	318	Greensboro Main	UG	Constitutional Law	B+	3.000	9.90			
SPA	203	Greensboro Main	UG	Intermediate Spanish I	A-	3.000	11.10			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	54.00	3.60
Cumulative:	76.000	76.000	76.000	76.000	241.00	3.17

Unofficial Transcript

Term: Spring 2020

Term Comments: A global health emergency during this term required significant course changes. Unusual enrollment patterns and grades during this period may be a reflection of disruptions related to the pandemic and not necessarily a good indicator of the student's work.
College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)
Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
ADS	201	Greensboro Main	UG	Intro African American Studies	A	3.000	12.00			
ADS	210	Greensboro Main	UG	Blacks in American Society	A	3.000	12.00			
PSC	322	Greensboro Main	UG	American State Politics	A	3.000	12.00			
PSC	323	Greensboro Main	UG	Urban Politics	A	3.000	12.00			
SPA	204	Greensboro Main	UG	Intermediate Spanish II	A-	3.000	11.10			

	Attempt	Passed	Earned	GPA	Quality	GPA

	Hours	Hours	Hours	Hours	Points	
Current Term:	15.000	15.000	15.000	15.000	59.10	3.94
Cumulative:	91.000	91.000	91.000	91.000	300.10	3.29

Unofficial Transcript

Term: Summer 2020

Term Comments: A global health emergency during this term required significant course changes. Unusual enrollment patterns and grades during this period may be a reflection of disruptions related to the pandemic and not necessarily a good indicator of the student's work.

College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)
Additional Standing: Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
ADS	306	Online	UG	Tpcs:Intro to Comtempry Africa	A	3.000	12.00			
ADS	325	Online	UG	Black Women in the U.S.	A	3.000	12.00			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	6.000	6.000	6.000	6.000	24.00	4.00
Cumulative:	97.000	97.000	97.000	97.000	324.10	3.34

Unofficial Transcript

Term: Fall 2020

Term Comments: A global health emergency during this term required significant course changes. Unusual enrollment patterns and grades during this period may be a reflection of disruptions related to the pandemic and not necessarily a good indicator of the student's work.

College: College of Arts and Sciences
Major: Political Science
Student Type: Continuing
Academic Standing: Academic Good Standing (Combined Academic Standing)
Additional Standing: Dean's List
Last Academic Standing: Academic Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
ADS	305	Greensboro Main	UG	SpcTpc African American Poetry	A	3.000	12.00			
ADS	376	Online	UG	Africana Literature	A	3.000	12.00			
KIN	104	Greensboro Main	UG	Beginning Basketball	A	1.000	4.00			
MUS	211	Online	UG	Topics in Pop Music: Hip Hop	A	3.000	12.00			
PSC	105	Online	UG	Exploring Political Issues	A	3.000	12.00			
PSC	330	Greensboro Main	UG	Internship Campaigns/Elections	A	3.000	12.00			

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	64.00	4.00
Cumulative:	113.000	113.000	113.000	113.000	388.10	3.43

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	113.000	113.000	113.000	113.000	388.10	3.43
Total Transfer:	9.000	9.000	9.000	0.000	0.00	0.00
Overall:	122.000	122.000	122.000	113.000	388.10	3.43

Unofficial Transcript

RELEASE: 8.7.1

School of Law | Office of the Registrar

James E. Shepard, Founder

NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW
EXPLANATION OF TRANSCRIPT (8/20/15)

Accreditation: North Carolina Central University School of Law is accredited by the American Bar Association.

Calendar: North Carolina Central University School of Law operates on a semester system.

Grading System: North Carolina Central University School of Law follows a rigorous 4.00 scale and encourages its faculty to adhere to a "C" grade expectation curve in first-year and required upper-level courses. We take pride in remaining true to our historic mission and to the principles upon which we were founded. We provide an opportunity for a legal education to one of the most diverse student bodies in the nation. We also provide an opportunity for a select few who, based upon traditional criteria and guidelines, might not otherwise be afforded the opportunity for a legal education but in whom we see great potential. Because our student population includes those in whom we have taken a calculated risk, we must be rigorous in our assessment of our students' academic achievement and have adopted a policy that critically assesses their skills and knowledge. While this policy results in a high attrition rate for our first-year class, it ensures that students who continue have performed at a level that we have identified as necessary for future success. Students who do not maintain a 2.0 grade point average at the end of their first, second, or third year are academically dismissed.

Grade	Grade Points
A	4.00 (Highest)
A-	3.67
B+	3.33
B	3.00 (Good)
B-	2.67
C+	2.33
C	2.00 (Average)
C-	1.67
D+	1.33
D	1.00 (Poor)
D-	.67
F	.00 (Failing)

Class Rank: North Carolina Central University School of Law ranks currently enrolled Day Program and Evening Program students separately among members of their respective class. Day and Evening students are not ranked together until May of their final year. We do not support and have chosen not to adopt grade inflation to make our students more attractive candidates for employment. Therefore, the student's class rank, not grade point average, is one of the most effective ways to determine the strongest students under our rigorous grading system.

Intensive Writing Program: North Carolina Central University School of Law has an intensive writing program that requires students to take six credit hours of writing instruction during their first year and two additional writing courses prior to graduation. Performance in these classes is another effective way to determine the strongest students.

Graduates: Students are required to achieve a cumulative grade point average of 2.0 in 88 credit hours of course work to graduate.

Good Standing: A student will be deemed to be in good standing by having maintained academic eligibility to continue at the School of Law.

NORTH CAROLINA CENTRAL UNIVERSITY • 640 NELSON STREET • DURHAM, NC 27707 • (919) 530-6112 • FAX (919) 530-7622

North Carolina Central University School of Law, 640 Nelson Street, Durham NC 27707

Dear Selection Committee:

Re: Jada Satchell

I am delighted and honored to recommend Jada Satchell for a judicial clerkship. As veteran legal educator, the former dean and now a professor at North Carolina Central University School of Law, I have enjoyed the opportunity to know and teach thousands of students during my career. I have known Ms. Satchell for two years, and I can truly say it was my pleasure to serve as her professor.

Ms. Satchell was my student in four classes—Professional Responsibility, Legal Letters, Property I and Property II; thus, we spent the entirety of the two years seeing each other three and sometimes four times per week. Early in first-year, she distinguished herself as hardworking and earned my and her peers' respect. Her ability to see beyond the surface issues and to add context to the class discussion was always welcomed. As her professor, I had the opportunity to observe her participation and interaction in class with her fellow students. She captured the classroom with her soft-spoken self-confidence, honesty, and positive attitude. This was quite a feat, when some class sessions had to meet remotely through zoom.

In my legal writing class, I recognized Ms. Satchell as an extraordinary communicator and writer. Students were tasked with drafting a thesis paper related to Real Estate Transaction and Land Loss.
Then they had to a present their findings to the class. The final paper created by Ms. Satchell exhibited her outstanding legal research and writing skills. Additionally, Ms. Satchell clearly articulated her research findings during her presentation and throughout her thesis paper. Her strong work ethic and determination lead her to receive exceptional results in class.

In addition, Ms. Satchell has an elevated level of integrity and uprightness. The high ethical standards she held for herself allowed her to comprehend the professional responsibility issues raised in the class. During the class, Ms. Satchell further demonstrated that she was an engaging individual who could instruct people by example. I can confidently say that Ms. Satchell is a great future leader from whom people can pattern their character.

Ms. Satchell was a strong student in all respects, evidenced by her academic achievements, work ethic, and ambition. She acts politely, and respectably, whether professionally or in her personal affairs. I wholeheartedly recommend Ms. Satchell for her clerkship. Her skills in research and writing combined with her analytic ability make her an excellent fit. As a former Alabama Supreme Court Clerk, I can attest that she has the necessary skills to succeed. I am confident she will be an invaluable addition to your team and one to watch out for in the future. I recommend her without reservation.

Sincerely,

Phyliss Craig-Taylor, Professor of Law

North Carolina Central University School of Law, 640 Nelson Street, Durham NC 27707

June 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a professor at the North Carolina Central University School of Law in Durham, NC, where I teach Torts and Constitutional Law. The above-referenced party is a candidate for a clerkship in your chambers, beginning in the Fall of 2024. I'm extremely pleased to offer this letter in support of her candidacy.

I taught Ms. Satchell this year in Con Law I and II, so I had her all year long and had ample opportunity to assess her skill set. In short, I cannot say enough good things about her. Students tend to have a love-hate relationship with Con Law. Seeing the law potentially change in real time because of the contemporary cases (See e.g., Dobbs v. Jackson Women's Health) gives it a real-world impact more so than other classes, but students also get frustrated with the Court's shifting positions over time, which can result in inconsistency in the law. Ms. Satchell performed exceptionally well in my classes. Her brain works very quickly. She is very intellectually curious. She is a good communicator, in both oral and written formats, and she is disciplined and very professional in how she goes about her day-to-day work. On occasion, students will come to me at the end of the semester and ask … why didn't I make an A? I frequently tell them because their daily preparation was not an A level, making it more difficult for them to achieve that mark at exam time. Ms. Satchell did A level work every single day, which explained why she fared so well in the class. Her consistency of effort is one of her major attributes.

While it is more of an intangible factor than substantive, I must also say Ms. Satchell is one of the more personable students I have ever taught. She has excellent social skills and possesses the ability to get along well with people from multiple backgrounds with ease. I think her innate ability to connect with people will cut down on the social distance that often exists between lawyer and client, which I think will help create a smoother transition from student to practitioner. I think she possesses immense potential for our field.

I know these clerkships are highly competitive. My hope though is that you will take the time to meet Ms. Satchell. I think you will see why we feel so strongly about her ability to thrive in this position. Thank you very much for your time, and consideration of her application.

Sincerely,

Don Corbett

Professor of Law

Donald Corbett - dcorbett@nccu.edu - 530-7159

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

This letter is in support of Jada Satchell's application to be your law clerk. Ms. Satchell was a student in my Civil Procedure I and II classes as well as Legal Letters-Employment Discrimination class. As a former law clerk to the late Judge John Garrett Penn in United States District Court, I understand the importance of having a law clerk with strong writing and analytical skills as well as a person with a pleasant personality in a small staff. Ms. Satchell has the skills and personality to be a great law clerk and be a positive addition to your chambers. I enthusiastically support Ms. Satchell's application to be your law clerk.

She is a hardworking and very bright student. In my Civil Procedure I and II classes, Ms. Satchell received high grades in both semesters, and she received the highest grade in the spring semester. She was always prepared for class, and she demonstrated a thorough understanding of the material. In the Legal Letters class, where she had to draft an engagement letter, an interoffice memorandum, an opinion letter and letter to the opposing party, she demonstrated very strong research and writing skills. Furthermore, the class required her to demonstrate an understanding of complex federal statutes and regulations and to be sensitive to issues of citizens dealing with sexual harassment. Ms. Satchell excelled in the class and received an A as her final grade. Moreover, she has strong work ethics, and she carries herself in a professional manner. She is a confident woman, and she is open to constructive criticism. Ms. Satchell interacts well with her peers and clearly is a team player. I have had the opportunity to interact with Ms. Satchell outside of the classroom and I know her to be a pleasant person. I was so impressed with Ms. Satchell's academic skills and professionalism that I recommended her to by the tutor for my Civil Procedure class during her second year. She has excelled as a tutor and the student feedback regarding her contributions is outstanding.

I am confident that after you have reviewed her application, you will agree that she will be a great law clerk and that she would as an asset to your chambers. If you have any questions about Ms. Satchell, please do not hesitate to contact me.

Sincerely yours,

David A. Green
Professor of Law

WRITING SAMPLE

As a 2L law student at NCCU School of Law, I prepared the attached memorandum for a legal writing assignment. The memorandum examines the potential success of a clients claim for sexual harassment against their employer. I have received permission from my instructor to use this memorandum as a writing sample.

OFFICE MEMORANDUM

To: David A. Green Esq.

From: Jada Satchell Esq.

Re: Alan Burns Allegations of Sexual Harassment

Date: February 15, 2023

QUESTIONS PRESENTED

I. Did Joyce Newman, in reducing Mr. Burns caseload by fifty percent, establish that she was his supervisor and impute liability to the Firm under the doctrine of vicarious liability?

II. Were Ms. Newman's comments like "I'd love to see you in nothing but that tie," "I am built for comfort not style," and her attempt to show Mr. Burns her breasts after a holiday party considered to be severe and pervasive?

III. Did Ms. Newman's agreement to forgo her bonus, and the Firms' reassignment of Alan Burns to the Chicago office of the Firm following the HR investigation of Ms. Newman's behavior constitute a sufficient remedial measure?

BRIEF ANSWERS

I. Yes. Ms. Newman's reduction of Mr. Burns caseload is a tangible employment action. *See* Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 745 (1998). As Mr. Burns' direct supervisor, Ms. Newmans' actions impute vicarious liability to the Firm. *See* Katz v. Dole, 709 F.2d 251, 255 (4th Cir. 1976). Ms. Newman's reduction of Mr. Burns caseload only after he placed the sexual harassment article on her desk constitutes a tangible employment action. *See* Johnson v. Booker T. Washington Broad. Serv., Inc., 234 F.3d 501, 512 (11th Cir. 2000) (transfer to midday shift resulting in $8,000 pay decrease was a tangible employment action.)

II. Yes. Ms. Newman's comments and attempt to show her breasts at the holiday party were severe and pervasive due to the power dynamic between the two and the continuous nature of their interactions. *See* Jennings v. Univ. of N. Carolina, 482 F.3d 686, 696 (4th Cir. 2007) and Swentek v. USAIR, Inc., 830 F.2d 552, 562 (4th Cir. 1987). A reasonable person would consider Mr. Burns' experience to be hostile or abusive. *See* Katz, 709 F.2d at 255.

III. No. Ms. Newman's voluntary surrender of her bonus, and the Firms' decision to transfer Mr. Burns to its Chicago office were not sufficient remedial measures. *See* Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991). The Firm's actions did not deter future harassers and instead punished the victim. *Id.*

STATEMENT OF FACTS

Alan Burns is a third-year associate at Hickman, Mays & Taylor (hereafter "the Firm") in Raleigh, North Carolina. The following information recaps what was provided by Mr. Burns in our initial interview. Ms. Newman is a fifty-seven-year-old divorcee with two children and operates as Mr. Burns' direct supervisor. She supplies over fifty percent of his work and is the Raleigh offices' top "rainmaker." Additionally, she is one of the top "rainmakers" in the entire Firm. Ms. Newman handles large-scale arbitration and mediation cases. Ms. Newman has said to Mr. Burns, "[w]ould you consider an older woman," she has also remarked that she was "[b]uilt for comfort, not for style" and that she "[w]ould love to see you in nothing but that a tie." Moreover, in one particular instance, she attempted to show her breasts to Mr. Burns after a holiday party. During this incident, she had exposed herself when his back was to her; however, Mr. Burns' secretary, Joanne Mimms, saw what she had done, which was evident by her exclamation, "Joyce, I can't believe you did that." Upon turning around, Mr. Burns indicated that he saw her lowering her blouse.

Her behavior is frequent, and he experiences a variety of inappropriate comments or actions almost weekly. Mr. Burns mentioned his secretary was present or made aware of every instance of Ms. Newman's improper conduct. Furthermore, he believes that he is the only individual experiencing this behavior. After placing an article about sexual harassment in the workplace on Ms. Newman's desk, she gave Mr. Burns the "silent treatment" and did not give him any more cases. Following this behavior, Mr. Burns went to David Bickers, the managing partner of the Raleigh Office, who stated he would assign the matter to human resources located in the New York office. After receiving the human resources investigation results, Mr. Bickers sent Mr. Burns a letter detailing the Firm's response to his complaints. Within the letter, the Firm stated, "Joyce's interaction with you did not give rise to a "sexual harassment" violation as provided for in Title VII of the Civil Rights Act of 1964." Although the Firm did not deem Joyce's conduct to be sexual harassment, she and the Firm agreed that she would not receive her bonus for that fiscal year. Furthermore, the Firm decided to reassign Mr. Burns to its office in Chicago to avoid "any further interaction with Joyce." The Firm has indicated that it will adjust Mr. Burns' salary to be consistent with the cost of living in Chicago; however, it is not his desire to relocate.

DISCUSSION

Mr. Burns may establish that he was a victim of sexual harassment. To assert a claim for sexual harassment, a plaintiff must satisfy four requirements. (1) the plaintiff must prove the conduct was unwelcome; (2) that the conduct was based on their sex; (3) the conduct was severe and pervasive such that it affected the plaintiff's work environment; and (4) the actions of the employee are imputable to the employer. Spicer v. Com. of Va., Dep't of Corr., 66 F.3d 705, 709–10 (4th Cir. 1995) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 1993). Here, Mr. Burns may show that the actions of Ms. Newman are attributed to the Firm because she committed a tangible employment action when reducing his caseload by more than fifty percent. *See* Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 745 (1998). Moreover, Mr. Burns may establish that Ms. Newman's actions were sufficiently severe and pervasive due to their power dynamic and the continuous nature of their interactions. *See* Jennings v. Univ. of N. Carolina, 482 F.3d 686, 696 (4th Cir. 2007). Furthermore, Mr. Burns may show that Ms. Newman's voluntary surrender of her bonus and the Firm's reassignment of him to its Chicago office were insufficient remedial measures

because they did not discourage future harassers and instead punished the victim. *See* Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991). Thus, Mr. Burns is likely to be successful in a claim for sexual harassment against Ms. Newman and the Firm.

Firm Liability

Joyce Newman is Alan Burns' supervisor, and as such, her actions of reducing Mr. Burns' caseload after he placed the sexual harassment article on her desk impute liability to the Firm. An employer is liable for a partner's actions under the doctrine of respondeat superior. *See* Katz v. Dole, 709 F.2d 251, 255 (4th Cir. 1976). Since Ms. Newman is a partner in the Firm's Raleigh office and operates as Mr. Burns' direct supervisor, the Firm is liable for her actions when operating within the scope of her employment. *See Id.* Her decision to reduce Mr. Burns' caseload by more than fifty percent was one she made as both his supervisor and a partner at the Firm. In *Katz,* the court stated that a plaintiff has an additional responsibility of showing firm liability only if the alleged harasser is not a "proprietor, partner, or corporate officer." *Id.* Here, Mr. Burns may establish that the Firm is liable for the actions of Ms. Newman because she falls within one of the categories of automatic liability found by the court in *Katz. Id.*

Ms. Newmans' decision to reduce Mr. Burns' caseload by more than fifty percent may constitute a tangible employment action subject to vicarious liability. To determine whether an employer is subject to vicarious liability rather than negligence, there has to be a tangible employment action taken by a supervisor with authority over the employee. Burlington Indus., 524 U.S. at 745, *See also*, Kotcher v. Rosa & Sullivan Appliance Ctr., Inc., 957 F.2d 59, 62 (2d Cir. 1992) (If the plaintiff can show… an economic injury from their supervisor's actions, the employer becomes strictly liable…The supervisor is deemed to act on behalf of the employer when making decisions that affect the economic status of the employee *Id.*). A tangible employment action occurs when an employee is terminated, suspended, or reassigned with substantially different responsibilities. *Compare* Butler v. Ysleta Indep. Sch. Dist., 161 F.3d 263, 268 (5th Cir. 1998) ("Fact that the elementary school principal, who allegedly sent harassing anonymous letters to two female teachers, decided to reassign them to different grade levels did not constitute a tangible employment action" *Id.*), and Cotton v. Cracker Barrel Old Country Store, Inc., 434 F.3d 1227, 1232 (11th Cir. 2006) (Employee failed to establish tangible employment action due to lack of causal connection between harassment and subsequent reduction in hours *Id.*), *with* Johnson v. Booker T. Washington Broad. Serv., Inc., 234 F.3d 501, 512 (11th Cir. 2000) (Reassignment from midday shift to evening shift that resulted in an $8000.00 pay decrease was sufficient to establish a tangible employment action. *Id.*), and Durham Life Ins. Co. v. Evans, 166 F.3d 139, 153–54 (3d Cir. 1999) (Insurance agent's 50% pay decrease due to the number of lapsed policies received was a tangible adverse employment action *Id.*). Here, Mr. Burns' reduction in caseload would constitute a tangible employment action.

Like in *Johnson*, when the court found the actions of the employer to be a tangible employment action, Mr. Burns may establish that a court would likewise find the same. *See* Johnson, 234 F. 3d at 512. The court held that a midday to night shift transfer resulting in an $8000 pay decrease was a tangible employment action. *Id.* Here, Mr. Burns may persuade the Court to act similarly because the plaintiff in *Johnson*, like Mr. Burns, was supervised by their alleged harasser. *Id*. Additionally, the plaintiff in *Johnson* contended the transfer of shifts was a direct result of the sexual harassment they refused to endure from their supervisor. *Id*. In the present

matter, Mr. Burns reports directly to Ms. Newman. Because of this, he may show that his sudden reduction in casework and her refusal to speak to him resulted from Ms. Newman's reaction to the sexual harassment article he placed on her desk. Thus, the reduction of Mr. Burns' caseload may constitute a tangible employment action.

Unlike in *Cotton*, when the court found no causal connection between the reduction of an employee's hours and the alleged sexual harassment, Mr. Burns will be able to show a causal connection between the reduction of his caseload and Ms. Newman's harassment. Cotton, 434 F. 3d at 1232. In *Cotton*, the Court noted the reduction of the plaintiff's hours, suggesting it stemmed from regular business practices during seasonal periods. *Id*. However, here, Mr. Burns may prove that his reduction was causally connected to his harassment because it occurred immediately after he placed the sexual harassment article on Ms. Newman's desk. *See Id*. Prior to the placement of the article, Ms. Newman regularly assigned Mr. Burns casework and spoke to him; Ms. Newman's behavior changed only after she found the article on her desk. Therefore, it is likely that Mr. Burns will be able to successfully argue that The Firm is liable for the actions of Ms. Newman.

Thus, it is likely that Mr. Burns may establish that Ms. Newman committed a tangible employment action when she reduced his caseload by more than fifty percent. *See* Burlington Indus., 524 U.S. at 745. Since Ms. Newman was acting as Mr. Burns' supervisor and her reduction of his caseload was made within the scope of her employment, the Firm may be held liable for her actions. *See* Katz, 709 F.2d at 256.

Severe and Pervasive

Ms. Newman's comments like "I would like to see you in nothing but that tie" and "I am built for comfort, not style," along with her attempt to show Mr. Burns her breasts after a holiday party was, both severe and pervasive. Harassment amounts to be sufficiently severe or pervasive if it creates "an environment that a reasonable person would find hostile or abusive" and the victim "subjectively perceive[s] ... to be abusive." Jennings, 482 F.3d at 696 (quoting Harris, 510 U.S. at 21). Merely making an offensive comment toward an employee is insufficient to implicate Title VII. *Id.* (quoting Rogers v. E.E.O.C., 454 F.2d 234, 238 (5th Cir. 1971)). In determining whether an environment is hostile, a court may examine "the frequency of the discriminatory conduct; its severity; and whether it reasonably interferes with an employee's work performance." Harris, 510 U.S. at 21. *Compare* Jennings, 482 F. 3d at 698. ("Male soccer coach's persistent inquiries into his female team members' sex lives, if proven, was sufficiently severe or pervasive to create a hostile or abusive environment, given, inter alia, his power and influence as the most successful women's soccer coach in United States college history, and age disparity between coach and players." *Id*.) and Swentek v. USAIR, Inc., 830 F.2d 552, 562 (4th Cir. 1987) (Pilot for several years used sexually abusive language and conduct such that the case should not have been dismissed pursuant to summary judgment. *Id*.) *with* Harris v. Clyburn, 47 F.3d 1164 (4th Cir. 1995) (Defendant-Supervisor never said anything sexual in nature, fondled, or asked plaintiff-employee out on a date, therefore allegations were not severe or pervasive. *Id*.) Here, Mr. Burns may be able to establish that Ms. Newman's comments and actions were severe and pervasive.

Like in *Jennings*, where the Court found the power dynamic between the head soccer coach and his players to be influential as it relates to the severity and pervasiveness of his statements, Mr. Burns may also argue a court should consider the power dynamic between him and Ms. Newman. *See* Jennings, 482 F.3d at 696. In *Jennings*, the Court held that due to the power dynamic between the plaintiff and defendant, his continuous vulgar comments created a hostile environment

because the plaintiff feared retaliation or reprimand. *Id*. at 697. As Mr. Burns' direct supervisor, and supplier of fifty percent of his caseload, Ms. Newman assumes a similar role as the coach in *Jennings*. *See Id*. Her continuous comments and attempt to show Mr. Burns' breast may be examined in a light similar to the coach in *Jennings* because both individuals were in positions of direct authority to the alleged victims. *See Id*. The Court in *Jennings* also held that the defendant's comments, coupled with his authority, facilitated an environment where the plaintiff could not fully participate in the soccer program. *See Id* at 698. Here, Mr. Burns may argue that Ms. Newman's comments, attempt to show her breasts, and her reduction in his casework, coupled with the fact that she is one of the Firm's top partners, interferes with his ability to perform at work effectively. Therefore, it is likely that Mr. Burns may be able to successfully argue that the objective standard set forth in *Harris* is met. Harris, 510 U.S. at 21.

Similar to *Swentek*, where the Court found that the defendant's continuous sexually explicit comments and acts were sufficient to argue severe and pervasive behavior, Mr. Burns may establish that a court would find the same here. Swentek, 830 F.2d at 562. In *Swentek*, the Court found that the plaintiff alleged more than an "ordinary run of insult and offense" because she communicated how the defendant consistently used sexually suggestive language and "dropped" his pants in front of her. *Id*. Here, Mr. Burns may establish that the comments like "I'd love to see you in nothing but that tie," "Would you consider an older woman," and "I am built for comfort, not style" are sexually suggestive and as such should be treated in a similar manner as the Court in *Swentek*. *See Id*. Furthermore, Mr. Burns may establish that Ms. Newman's lifting her shirt to show him her breasts after the Firm's holiday party is analogous to the defendant's behavior in *Swentek* when he "dropped" his pants in front of the plaintiff. *See Id*. Mr. Burns will likely be able to assert that Ms. Newman's comments and actions were not "ordinary offenses" because they were continuous and sexually suggestive. *See Id*. Moreover, Mr. Burns may establish that Ms. Newman's actions were severe because after he placed the sexual harassment article on her desk, she substantially reduced his caseload and refused to speak to him. Additionally, Mr. Burns may establish Ms. Newman's comments and actions were pervasive because she interacted with him in this manner weekly, and Joanne Mimms can confirm this. Hence, it is likely Mr. Burns may successfully assert that Ms. Newman's interactions with him were severe and pervasive.

Unlike in *Harris*, where the Court found that the plaintiff did not assert any facts that suggested the defendant's conduct was severe and pervasive, Mr. Burns will be able to present viable facts that suggest a Court here should decide otherwise. Harris 47 F.3d 1164. In *Harris*, the court held that because the plaintiff failed to assert that the defendant did anything other than tickle her in the hallway, she had not alleged sufficient facts to be severe and pervasive. *Id*. Here, Mr. Burns may establish that because Ms. Newman made sexually suggestive comments and attempted to show her breast to him; he has sufficiently alleged severe and pervasive facts. Additionally, in *Harris*, the Court held that because the plaintiff did not allege the defendant had ever made sexually explicit comments, fondled her, or did anything sexual in nature, the plaintiff did not meet her burden of alleging severe and pervasive conduct. *Id*. (citing Meritor Savings Bank, FSB v. Vinson, 477 U.S. 67 (1986). Unlike the plaintiff in *Harris*, Mr. Burns will be able to allege that Ms. Newman's comments were sexual in nature and should be treated differently as it relates to sufficiency. *Id.* Furthermore, the Court in *Harris* held that the plaintiff did not sufficiently establish severe and pervasive conduct because she never complained of the defendant's behavior, never applied for another job, and was not demoted. *Id*. Here, Mr. Burns may establish that the reduction of his caseload by over fifty percent, his act of contacting David Bickers, and the Firm's decision

to re-assign him to its Chicago office further communicate that Ms. Newman's conduct was severe and pervasive. Thus, it is likely that Mr. Burns would be successful in establishing Ms. Newman's conduct was severe and pervasive.

Therefore, Mr. Burns will likely be successful in asserting that Ms. Newman's comments and actions were severe and pervasive because the power dynamic between the two limited his ability to protest her actions. *See* Jennings, 482 F.3d at 696. Furthermore, he may establish that the continuous nature of her comments, her decision to stop speaking to him, and her reduction of his caseload by over fifty percent caused a hostile work environment. *See* Swentek, 830 F.2d at 562.

Sufficiency of Remedial Measure

Joyce Newman's agreement to forgo her bonus and the reassignment of Mr. Burns to the Chicago office of the Firm following its HR investigation of Ms. Newman's behavior did not constitute a sufficient remedial measure. Remedial measures should be "reasonably calculated to end the harassment." Katz, 709 F.2d at 256. The reasonableness of an employer's remedial measure depends on its ability to diminish the likelihood of the person engaging in the harassment to act again. Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991) (citing Katz, 709 F.2d at 256 for the assertion that a remedial measure should be reasonably calculated). Failure to punish a harasser casts doubt on an employer's commitment to maintaining a harassment-free workplace. Swenson v. Potter, 271 F.3d 1184, 1197 (9th Cir. 2001). Furthermore, an employer should apply a remedy to deter all of its employees from engaging in inappropriate conduct. Ellison, 924 F.2d at 882. "Where an employee is not punished even though there is strong evidence that he is guilty of harassment, such failure can embolden him to continue the misconduct and encourage others to misbehave." Swenson, 271 F.3d 1197. *Compare* Ellison, 924 F. 2d at 882 (Transfer of the victim to another location was an insufficient remedial measure because it punished the victim. *Id.*) *with* Nash v. Electrospace Sys., Inc., 9 F.3d 401, 404 (5th Cir. 1993) (Transfer of the victim was a sufficient remedial measure because it insulated her from further contact with the harasser. *Id.*) and Portera v. Winn Dixie of Montgomery, Inc., 996 F. Supp. 1418, 1427 (M.D. Ala. 1998) (Remedial measure was sufficient because although the employer considered transferring the plaintiff, it ultimately transferred the harasser. *Id.*) Accordingly, Mr. Burns may be able to establish that Ms. Newman's agreement to forgo her bonus and his transfer to the Chicago office was not a sufficient remedial measure.

Similar to *Ellison*, where the Court found that the transfer of a victim of sexual harassment was not a sufficient remedial measure, Mr. Burns may be able to assert the same here. Ellison, 924 F.2d at 882. In *Ellison,* the Court held that when determining the adequacy of a remedy, a court should take into account the remedy's ability to deter future harassers. *Id.* Here, Ms. Newman's voluntary surrender of her yearly bonus could be considered insufficient due to its inability to deter potential harassers. *See Id.* Mr. Burns may establish that if a partner as successful as Ms. Newman is only required to forgo her bonus for her comments and behavior, the potential for his experience to recur with other members of the Firm is likely, and as such, the remedial measure is not reasonably calculated under the circumstances. Katz, 709 F.2d at 256. Furthermore, in *Ellison*, the Court made clear that the victim of sexual harassment should not be required to work at a less desirable location. Ellison, 924 F.2d at 882. In the present matter, Mr. Burns has communicated that he does not wish to work in the Firm's Chicago office and would prefer to stay in its Raleigh office. Mr. Burns' stance is analogous to the plaintiff in *Ellison*, who did not desire to be transferred from her original office. *See Id.* The Court, in that case, found that because the defendant

transferred the plaintiff rather than her harasser, it was punishing the victim for the conduct of her harasser. *See Id*. Here, Mr. Burns may assert that the Firm's decision to transfer him to its Chicago office rather than Ms. Newman may be perceived as a punishment for Mr. Burns rather than his alleged harasser. Consequently, it is likely that Mr. Burns will be able to successfully assert the Firm has not provided a sufficient remedy reasonably calculated under the circumstances.

Unlike in *Nash*, where the Court found that the transfer of the victim was a sufficient remedial measure because the defendant did not have any corroborating evidence of the harassment, Mr. Burns may persuade a court to determine otherwise. *See* Nash, 9 F.3d at 404 (citing Harris, 510 U.S. at 21.) In *Nash*, the Court found the prompt investigation by the defendant, and its decision to transfer the plaintiff to another department with no pay reduction, was sufficient because there was no corroborating evidence that harassment had occurred. *Id*. In that case, the defendant denied engaging in harassment, and no co-workers could attest to any offensive behavior. *Id*. However, in Mr. Burns' matter, he may establish that Ms. Newman did not deny that she engaged in harassing behavior. *See Id*. On the contrary, Mr. Burns may assert that because Ms. Newman stopped speaking to him after he placed the sexual harassment article on her desk, Ms. Newman never explicitly denied engaging in harassing behavior, and she voluntarily agreed to forgo her bonus; these actions may be perceived as an admission of some wrongdoing on her behalf. *See Id*. Furthermore, Mr. Burns may present corroborated evidence of his harassment through testimony by Joanne Mimms, who was present during the holiday party when Ms. Newman attempted to show Mr. Burns her breast. *See Id*. Additionally, Ms. Mimms was informed about all instances of Mr. Burns' harassment, which bolsters his argument that this matter is distinct from *Nash*. *See Id*. Thus, it is likely Mr. Burns may successfully argue that because the Firm's actions do not deter potential harassers and Mr. Burns can corroborate his assertions of harassment; the Firm has not provided a sufficient remedial measure.

Dissimilar to *Portera*, where the Court found that the transfer of the harasser rather than the victim was a sufficient remedial measure, Mr. Burns may prompt a court to find otherwise. Portera, 996 F. Supp. 1427 (citing Harris, 510 U.S. at 21.) In *Portera*, the Court held that the plaintiff may not assert the defendant failed to take remedial action because the plaintiff initially requested a transfer. Upon that request, the defendant offered her another position which she accepted. *Id*. Here, Mr. Burns may establish that he did not request a transfer to the Chicago office of the Firm. Additionally, unlike the plaintiff in *Portera*, Mr. Burns had no opportunity to choose whether to stay in the Raleigh office or be transferred. *Id*. Moreover, in *Portera*, the Court found that although the defendant initially considered transferring the plaintiff, it ultimately transferred her harasser. *Id*. Here, Mr. Burns may assert that a court should find differently because, unlike the defendant in *Portera*, the Firm merely agreed with Ms. Newman to forgo her bonus and decided to transfer Mr. Burns. *Id*. Therefore, it is likely that Mr. Burns may successfully argue that the agreement to forgo Ms. Newman's bonus and the Firm's decision to transfer him does not deter potential harassers, and as such, would not constitute a sufficient remedial measure.

Thus, Mr. Burns may likely establish that the voluntary surrender of Ms. Newman's bonus and the Firm's reassignment of him to the Chicago office, were insufficient remedial measures because they failed to deter potential harassers. *See* Ellison, 924 F.2d at 882.

CONCLUSION

Mr. Burns may successfully assert the necessary factors to impute liability to the Firm for Ms. Newman's severe and pervasive actions, and its failure to provide sufficient remedial measures. Mr. Burns can establish that because Ms. Newman was his supervisor when she refused to speak to him and reduced his caseload after he placed the sexual harassment article on her desk, she committed a tangible employment action. *See* Burlington Indus., 524 U.S. at 745. Moreover, Mr. Burns may show that Ms. Newman's comments and attempt to show him her breasts at the holiday party were severe and pervasive because of their power dynamic and the frequency of her actions. *See* Jennings, 482 F.3d at 696. Furthermore, Mr. Burns may assert that the voluntary surrender of Ms. Newman's bonus and the Firm's reassignment of him to its Chicago office was insufficient remedial measures. The actions taken by the Firm do not discourage or deter future harassers, and as such, they are an inadequate remedy. *See* Ellison, 924 F.2d at 882. Therefore, Mr. Burns may successfully prove that he is a victim of sexual harassment.

Applicant Details

First Name	**Gabriel**
Last Name	**Scavone**
Citizenship Status	**U. S. Citizen**
Email Address	**gscavone@law.gwu.edu**
Address	**Address** Street **1771 N. Pierce St., Apt. 1817** City **Arlington** State/Territory **Virginia** Zip **22209**
Contact Phone Number	**407-620-3670**

Applicant Education

BA/BS From	**Rollins College**
Date of BA/BS	**May 2020**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 1, 2023**
Class Rank	**20%**
Law Review/Journal	**Yes**
Journal(s)	**The George Washington Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Van Vleck Constitutional Law Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Byron, Paul
paul_g_byron@flmd.uscourts.gov
407-496-3792

Trangsrud, Roger
rtrang@law.gwu.edu
(703) 534-3119

Pollack, Charles
pollackc@law.gwu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

GABRIEL SCAVONE

1771 N Pierce St, Arlington, VA 22209 • (407) 620-3670 • gscavone@law.gwu.edu

March 24, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am a third-year student at The George Washington University Law School and am writing to apply for a judicial clerkship with you for the August 2024–2025 term.

After graduation and upon completion of the D.C. bar examination, I will be working fulltime as a litigation associate in the Washington D.C. office of Steptoe & Johnson LLP until the beginning of the clerkship term.

I believe I am well equipped to contribute to your chambers and assist in the management of your docket. I have honed precise legal writing and technical editing skills through my experience as Senior Managing Editor of *The George Washington Law Review* and while serving as a judicial intern in two separate federal courts. I am detail-oriented, a hard-working former student athlete, and am eager to learn under your guidance.

Accompanying this letter, please find a resume, writing sample, and transcripts. Please also find recommendations from Professors Pollack and Trangsrud, as well as a recommendation from the Honorable Paul G. Byron. Thank you for your consideration.

Respectfully,

Gabriel Scavone

GABRIEL SCAVONE

1771 N Pierce St., Apt. 1817, Arlington, VA 22209 • (407) 620-3670 • gscavone@law.gwu.edu

EDUCATION

The George Washington University Law School Washington, D.C.
J.D., cum laude May 2023
GPA: 3.603 Class Rank: 142/526
Activities: *The George Washington Law Review*, Senior Managing Editor, Volume 91; Alternative Dispute Resolution Board, Member; Van Vleck Moot Court Competition; GW Law Softball
Honors: Spanogle Commercial Arbitration Competition, Best Brief Award; Dean's Pro Bono Service Award; Presidential Volunteer Service Award

University of Miami School of Law Coral Gables, FL
J.D. Candidate – Completed 1L Year August 2020 – May 2021
GPA: 3.628 Class Rank: Top 17%
Honors: Dean's Merit Scholarship Recipient; Dean's List Spring 2021

Rollins College Winter Park, FL
B.A, in Philosophy; *Minor in Political Science, cum laude* May 2020
Activities: Student Athlete – Rollins College Men's Varsity Baseball Team
Honors: Athletic Conference Honor Roll (four semesters); Dean's List (four semesters)

EXPERIENCE

The Jacob Burns Community Legal Clinics, Public Justice Advocacy Clinic Washington, D.C.
Student Attorney January 2023 – May 2023
- Represented indigent clients in wage and unemployment compensation matters
- Negotiated two settlements with opposing counsel and achieved settlement on behalf of clients

The George Washington Law Review Washington, D.C.
Senior Managing Editor, Volume 91 March 2022 – May 2023
- Reviewed and completed substantive and technical edit of entire law review issue before publication

Steptoe & Johnson LLP Washington, D.C.
Summer Associate June 2022 – August 2022
- Analyzed caselaw and provided team with memoranda to assist in litigation planning, including analysis of fair use affirmative defense in a copyright infringement case, and the Fifth Amendment privilege
- Evaluated police brutality cases as part of firmwide pro bono project

United States Court of Federal Claims Washington, D.C.
Judicial Intern to The Honorable Marian B. Horn January 2022 – April 2022
- Drafted orders and memoranda pertaining to Tucker Act Jurisdiction and attorney's fees

United States District Court for the Middle District of Florida Orlando, FL
Judicial Intern to The Honorable Paul G. Byron May 2021 – July 2021
- Attended court hearings and engaged in daily case discussions with Judge Byron
- Reviewed case records and drafted various orders, including an order on motions for summary judgment

INTERESTS

- Baseball; visiting every MLB park; hiking; paddleboarding; golf; running; trying new restaurants

54477408 Sex
Student ID

06/29/2021

UNIVERSITY OF MIAMI

MIAMI

CORAL GABLES, FLORIDA 33124

Scavone, Gabriel
1746 Fairview Shores Dr.
Orlando, FL 32804

Academic Program

School of Law
Active in Program
Law

Beginning of Law Record

Fall 2020

UM_Crs_ID	Course Title	Credits	Grade	Qty Pts
LAW 11	CIVIL PROCEDURE I Anthony Alfieri	3.000	A-	11.100
LAW 14	PROPERTY Andres Sawicki	4.000	A	16.000
LAW 15	TORTS Zanita Fenton	4.000	B	12.000
LAW 19	LEGAL COMM & RSCH I Jarrod Reich	2.000	B+	6.600

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.515	UM Semester Totals	13.000	13.000	45.700
UM Cumulative GPA	3.515	UM Cumulative Totals	13.000	13.000	45.700

Spring 2021

UM_Crs_ID	Course Title	Credits	Grade	Qty Pts
LAW 12	CONTRACTS Andrew Dawson	4.000	A-	14.800
LAW 16	CRIMINAL PROCEDURE Scott Sundby	3.000	B+	9.900
LAW 17	U.S CONST LAW I Frances Hill	4.000	A-	14.800
LAW 29	LEGAL COMM & RSCH II Cheryl Zuckerman	2.000	A	8.000
LAW 320	SUBSTANTIVE CRIMINAL LAW Martha Mahoney	3.000	A	12.000

			Earned Credits	Graded Credits	Qty Pts
UM Semester GPA	3.719	UM Semester Totals	16.000	16.000	59.500
UM Cumulative GPA	3.628	UM Cumulative Totals	29.000	29.000	105.200

Term Honor: DEAN'S LIST

Law Career Totals

			Earned Credits	Graded Credits	Qty Pts
UM Cumulative GPA	3.628	UM Cumulative Totals	29.000	29.000	105.200
		Cumulative Transfer Totals	0.000		
		Cumulative Combined Totals	29.000		

End of Law

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G43417108
Date of Birth: 09-SEP

Date Issued: 24-MAY-2023

Record of: Gabriel Scavone

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: GABRIEL SCAVONE
GSCAVONE@LAW.GWU.EDU

REFNUM:4386553

Current College(s):Law School
Current Major(s): Law

Degree Awarded: J D 21-MAY-2023
With Honors
Major: Law

JD RANK: 142/526

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
NON-GW HISTORY:			
2020-2021	University of Miami		
LAW 6202	Contracts	4.00	TR
LAW 6206	Torts	4.00	TR
LAW 6208	Property	4.00	TR
LAW 6210	Criminal Law	3.00	TR
LAW 6212	Civil Procedure	3.00	TR
LAW 6214	Constitutional Law I	4.00	TR
LAW 6216	Fundamentals Of Lawyering I	2.00	TR
LAW 6217	Fundamentals Of Lawyering II	2.00	TR
LAW 6360	Criminal Procedure	3.00	TR
Transfer Hrs: 29.00			
Total Transfer Hrs: 29.00			
GEORGE WASHINGTON UNIVERSITY CREDIT:			
Fall 2021			
Law School			
Law			
LAW 6209	Legislation And Regulation Sage	3.00	B+
LAW 6218	Prof Responsibility & Ethics Lee	2.00	A-
LAW 6250	Corporations Mitchell	4.00	A-
LAW 6400	Administrative Law Pierce	3.00	B+
LAW 6657	Law Review Note	1.00	H
Ehrs 13.00 GPA-Hrs 12.00 GPA 3.500			
CUM 13.00 GPA-Hrs 12.00 GPA 3.500			
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
********** CONTINUED ON NEXT COLUMN **********			

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Spring 2022			
Law School			
Law			
LAW 6236	Complex Litigation Trangsrud	3.00	A
LAW 6280	Secured Transactions Maggs	2.00	A
LAW 6380	Constitutional Law II Smith	4.00	A-
LAW 6642	Adr Competition (Spanogle) Johnson	1.00	CR
LAW 6657	Law Review Note	1.00	H
LAW 6668	Field Placement Mccoy	2.00	CR
LAW 6669	Judicial Lawyering Smith	2.00	B+
Ehrs 15.00 GPA-Hrs 11.00 GPA 3.758			
CUM 28.00 GPA-Hrs 23.00 GPA 3.623			
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
Fall 2022			
LAW 6230	Evidence Saltzburg	4.00	A
LAW 6300	Federal Income Taxation Bearer-Friend	3.00	A-
LAW 6644	Moot Court - Van Vleck	1.00	CR
LAW 6648	Negotiations Juni	2.00	A-
LAW 6658	Law Review	1.00	CR
LAW 6683	College Of Trial Advocacy Saltzburg	3.00	B
Ehrs 14.00 GPA-Hrs 12.00 GPA 3.611			
CUM 42.00 GPA-Hrs 35.00 GPA 3.619			
Good Standing			
THURGOOD MARSHALL SCHOLAR			
TOP 16%-35% OF THE CLASS TO DATE			
Spring 2023			
LAW 6232	Federal Courts	4.00	B+
LAW 6622	Public Justice Advocacy Clinic	6.00	A-
LAW 6652	Legal Drafting	2.00	A-
LAW 6658	Law Review	1.00	CR
Ehrs 13.00 GPA-Hrs 12.00 GPA 3.556			
CUM 55.00 GPA-Hrs 47.00 GPA 3.603			
********** CONTINUED ON PAGE 2 **********			

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G43417108
Date of Birth: 09-SEP

Date Issued: 24-MAY-2023

Record of: Gabriel Scavone

Page: 2

SUBJ NO COURSE TITLE	CRDT	GRD PTS

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	55.00	47.00	169.33	3.603
TOTAL NON-GW HOURS	29.00	0.00	0.00	0.00
OVERALL	84.00	47.00	169.33	3.603

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

NOTICE TO RECIPIENT

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DESIGNATION OF CREDIT
All courses are taught in semester hours.

TRANSFER CREDIT
Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM
All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School
Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN
The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA
Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS
Undergraduate Grading System
A, Excellent; *B*, Good; *C*, Satisfactory; *D*, Low Pass; *F*, Fail; *I*, Incomplete; *IPG*, In Progress; *W*, Authorized Withdrawal; *Z*, Unauthorized Withdrawal; *P*, Pass; *NP*, No Pass; *AU*, Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added: *A-, B+, B-, C+, C-, D+, D-*.
Effective Summer 1980: The grading symbols: *P*, Pass, and *NP*, No Pass, replace *CR*, Credit, and *NC*, No Credit.

Graduate Grading System
(Excludes Law and M.D. programs.) *A*, Excellent; *B*, Good; *C*, Minimum Pass; *F*, Failure; *I*, Incomplete; *IPG*, In Progress; *CR*, Credit; *W*, Authorized Withdrawal; *Z*, Unauthorized Withdrawal; *AU*, Audit. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System
A+, A, A-, Excellent; *B+, B, B-*, Good; *C+, C, C-*, Passing; *D*, Minimum Pass; *F*, Failure; *CR*, Credit; *NC*, No Credit; *I*, Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I*, the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System
H, Honors; *HP*, High Pass; *P*, Pass; *F*, Failure; *IP*, In Progress; *I*, Incomplete; *CN*, Conditional; *W*, Withdrawal; *X*, Exempt, *CN/P*, Conditional converted to Pass; *CN/F*, Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

This Academic Transcript from The George Washington University located in Washington, DC is being provided to you by Parchment, Inc. Under provisions of, and subject to, the Family Educational Rights and Privacy Act of 1974, Parchment, Inc. is acting on behalf of The George Washington University in facilitating the delivery of academic transcripts from The George Washington University to other colleges, universities and third parties.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Honorable Paul G. Byron
401 W. Central Blvd., Suite 4650
Orlando, Florida 32801
(407) 835-4321

June 21, 2022

Re: Letter of Recommendation
Mr. Gabriel Scavone

Dear Sir or Madam,

I am writing to recommend Mr. Scavone for your consideration. Mr. Scavone worked as a legal intern in my chambers during the summer of 2021. Summer interns assist my term law clerks with legal research, attend jury trials, and observe a variety of hearings. Additionally, I provide my summer interns the opportunity to draft an order on a dispositive motion. Mr. Scavone readily assumed responsibility for drafting an order on cross motions for summary judgement in a case involving alleged violations of § 1983. The order prepared by Mr. Scavone was exceptionally well-reasoned and resolved the case. This is a very impressive accomplishment particularly for a student who has just completed the first year of law school.

During the summer, I interacted with Mr. Scavone daily and found him to be a young man of exceptional character and intellect. He consistently comports himself with a maturity far beyond his years. Mr. Scavone is a well-rounded and very agreeable person, and it was a pleasure to have him in chambers for the summer. My only regret is that I do not have a term law clerk position available for 2023. I recommend Mr. Scavone to you without reservation, and I am confident he will make a valuable contribution to your office.

I am available at your convenience to discuss his many fine qualities and his candidacy should you desire additional information.[1]

Sincerely,

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

[1] Paul_G_Byron@flmd.uscourts.gov or (407) 835-4321.

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Gabriel Scavone as an outstanding candidate for a clerkship with your Honor.

I know Gabriel well. He was my student this spring in my Complex Litigation course. This is a small class [about 30 students] which attracts some of the brightest students at the law school who have an interest in civil litigation and clerking. The class focuses on class actions, MDL non-class aggregate litigation, discovery of ESI, and trial and pre-trial complexity. Gabriel earned one of the highest grades I awarded in the class.

Whenever I called on Gabriel in class he always gave sophisticated and thoughtful answers. He is an unusually hard working and gifted student. As a transfer student from Miami, he wrote his way on to our top journal – the GW Law Review. This is something very few transfer students accomplish. His good work on the journal led to his selection as a Senior Managing Editor.

If Gabriel joins your chambers, he will be one of the most well prepared clerks you have ever hired. While in Florida he interned with Paul Byron of the United States District Court for the Middle District of Florida and in DC with Judge Marian Horn of the Court of Federal Claims. This summer he will gain valuable experience as a summer associate with Steptoe and Johnson. You can be sure he will hit the ground running on the first day of his clerkship.

Gabriel was a Philosophy Major in college and a successful student-athlete. He has battled his way through the pandemic like many of his classmates. As a first generation law student, he has come far. I predict he will be one of your best clerks. He certainly promises to be a formidable civil litigator as he moves forward with his career.

If you have any questions for me about Gabriel, please call me [202-994-6182] or send an email [rtrang@law.gwu.edu]. Best regards.

Very truly yours,

Roger H. Trangsrud
James F. Humphreys Professor of Civil Procedure and Complex Litigation

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

March 24, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this recommendation letter on behalf of Mr. Gabriel "Gabe" Scavone who I understand is applying for a federal clerkship position. I am well qualified to speak on Mr. Scavone's legal research, writing, and oral communication skills as he enrolled in my scholarly writing course for the 2021-22 academic year.

Mr. Scavone is both a good writer and diligent researcher. He communicates clearly and effectively, without needing a prompt to offer a response. It is plainly obvious that Mr. Scavone cares about his work and is thoughtful in its completion. Mr. Scavone is professional in his demeanor and responds well to feedback, both positive and critical. Most importantly, he applies the feedback to improve his work product.

As an example, Mr. Scavone was tasked with drafting an 8,000-word Note to complete the scholarly writing course. Mr. Scavone chose to write about police accountability following the US Supreme Court's decision in Devenpeck v. Alford. Specifically, Mr. Scavone argued that the Devenpeck decision fosters police unaccountability because it unfairly denies recourse to plaintiffs who are arrested without probable cause for the crime identified by a police officer at the time of arrest. Mr. Scavone's final Note was exceptional as compared to his peers. Mr. Scavone received the highest grade in the class on this assignment after he thoughtfully drafted and revised it. Mr. Scavone asked me pointed questions throughout the process to tailor his research so the final product answered a legal problem with a precise legal solution. I encourage you to review this submission if Mr. Scavone elects to provide it.

Mr. Scavone is a person who I always knew prepared for class and would actively participate. Mr. Scavone frequently volunteered answers to posed questions or in response to his classmates. Mr. Scavone's classroom performance and overall demeanor helped him to achieve the position as Senior Managing Editor on The George Washington Law Review for the 2022-23 academic year. I am extremely confident that Mr. Scavone will serve as a tremendous resource for authors drafting scholarly articles next academic year.

Ultimately, I think Mr. Scavone will thrive in any environment that requires collaboration with others, like a federal clerkship position. Mr. Scavone will do well in assisting his judge to draft any document required or to perform thorough legal research. Mr. Scavone has insightful views to share and I know he will actively contribute as a judicial clerk.

Sincerely,
Charles R. Pollack
Associate General Counsel
Professorial Lecturer in Law

Charles Pollack - pollackc@law.gwu.edu

GABRIEL SCAVONE

1771 N Pierce St., Apt. 1817, Arlington, VA 22209 • (407) 620-3670 • gscavone@law.gwu.edu

Writing Sample

The following writing sample is a portion of the moot court appellate brief that I prepared as part of the 2022 Van Vleck Constitutional Law Moot Court Competition at my law school. For brevity, I have included only a brief statement of the case and my argument section.

I represented the Respondent in this matter, the superintendent of elections of a fictional state, and addressed the procedural issue of whether the federal courts have jurisdiction to hear the Petitioner's constitutional challenge to a fictional state statute that allows voters to challenge the qualifications of candidates running for federal electoral office.

This writing sample reflects my sole work product and was not edited or reviewed by anyone else.

STATEMENT OF THE CASE

Pursuant to N.C. Gen Stat. § 107–18.3 (the "N.C. Challenge statute"), any qualified voter registered in the same district as a candidate for any elective office in the state may file a challenge that the Candidate does not meet the constitutional or statutory qualifications for the office. Petitioner, Sean O'Shaghnessy serves as the member of Congress for New Columbia's sixth congressional district and filed a notice of candidacy for the upcoming general election on May 16, 2022. On May 20, 2022, three registered voters in the sixth congressional district filed a challenge under the N.C. Challenge statute to Petitioner's candidacy with the N.C. Superintendent of Elections alleging that Petitioner had violated Section 3 of the Fourteenth Amendment by engaging in an insurrection. U.S. CONST. amend XIV, § 3. Voters assert that representative O'Shaghnessy either helped to plan the attack on January 6, or alternatively assisted those who did plan the January 6th attack, thereby disqualifying him from holding federal electoral office.

On May 24, 2022, Petitioner filed suit against the N.C. Superintendent of Elections in the District Court for the District of New Columbia, seeking to enjoin the state proceeding on the ground that the N.C. Challenge statute unconstitutionally permits New Columbia to make an independent evaluation of a candidate's qualifications, which is allegedly a power exclusively given to the U.S. House of Representatives in Article I, Section 5 of the Constitution. The District Court set a hearing date for seven days before the hearing before the N.C. Superintendent of Elections was to take place. Respondent agreed to stay all proceedings until the District Court decided the case.

On June 1, 2022, Respondent filed a motion to dismiss, arguing that the state proceeding should proceed because Petitioner has no standing due to lack of injury, the claim is not ripe, and the federal court is precluded from interfering in the state matter. The District Court dismissed the

complaint without prejudice on June 15, 2022, finding the matter premature. *O'Shaghnessy v. Morgenthal*, No. 22-sy-0428933, 4–5 (D.D.N.C June 15, 2022).

Petitioner immediately appealed to the Court of Appeals for the Thirteenth Circuit. On July 26, 2022, the appellate court issued an order affirming the ruling of the district court's dismissal of the case, finding that the case was premature and rejecting Petitioner's argument that Article I, Section 5 is the exclusive means for determining eligibility to the House of Representatives. *O'Shaghnessy v. Morgenthal*, No. 22-1623556, 4 (13th Cir. July 26, 2022). Petitioner timely filed a petitioner for a writ of certiorari, which this Court granted on August 29, 2022.

ARGUMENT

I. THE FEDERAL COURTS DO NOT HAVE JURSDICTION UNDER ARTICLE III TO ADJUDICATE PETITIONERS CHALLENGE TO N.C. GEN. STAT. § 107–18.3

A. The Federal Courts Do Not Have Jurisdiction Under Article III Because Petitioner Has Not Suffered an Injury in Fact

Federal courts "do not possess a roving commission to publicly opine on every legal question." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Under Article III of the Constitution, a federal court's jurisdiction is limited to "Cases" and "Controversies." U.S. CONST. art. III, § 2. The Supreme Court has established three standing requirements as the "irreducible constitutional minimum." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish standing, a plaintiff must show (1) an injury in fact—i.e., that they have suffered a past or imminent injury; (2) a causal connection between the injury and the suffered harm; and (3) a likelihood that a favorable court ruling will redress the injury. *See id.* at 560–61.

At issue in this case is whether Petitioner suffered an injury in fact by being subjected to proceedings under the N.C. Challenge statute, which the Petitioner alleges is unconstitutional.

An injury in fact must be "concrete, particularized, and actual or imminent"—that is, "real, and not abstract." *TransUnion*, 141 S. Ct. at 2203–04 (quoting *Spokeo, Inc., v. Robins*, 578 U.S. 330, 340 (2016)). This requirement ensures that plaintiffs have a "personal stake" in the case. *Id.* at 2203. It also ensures that the federal courts "do not adjudicate hypothetical or abstract disputes." *Id.*

With those concerns in mind, a mere risk of future harm, without more, does not suffice. A claim of future injury qualifies as a concrete harm "if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)).

In the context of threatened enforcement of the law, "it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Still, to satisfy the injury in fact requirement based on threatened enforcement of the law, the plaintiff must allege: (1) "an intention to engage in a course of conduct arguably affected with a constitutional interest," (2) that is "proscribed by a statute," and (3) the existence of "a credible threat of prosecution thereunder." *Susan B. Anthony List*, 573 U.S. at 159 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)).

Here, the Petitioner has not alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest." *Id.* This is because Petitioner fails to allege that their *future* conduct will subject them to further proceedings under the N.C. Challenge statute. On the contrary, it is Petitioner's *past* conduct of alleged participation in the January 6th insurrection that has subjected them to proceedings under the N.C. Challenge statute. Unless Petitioner intends to

engage in borderline unconstitutional conduct in the future that may subject them to further challenges to their candidacy under the N.C. Challenge statute, then they have not alleged a future course of conduct sufficient to meet the injury in fact standard as put forth in *Susan B. Anthony List*. *See id.*

Next, even if the Petitioner did allege that they intend to engage in future conduct that would subject them to further proceedings under the N.C. Challenge statute, such conduct would not be proscribed by the statute they wish to challenge. *Id.* The N.C. Challenge statute does not proscribe any conduct. The statute merely provides a unique vehicle for voters and the state of New Columbia alike to regulate their substantial interest in the candidates they place on the ballot. *See* N.C. Gen. Stat. § 107–18.3(a)–(e) (providing a mechanism for voters to challenge candidate qualifications, but not proscribing any particular candidate conduct).

Finally, there is no credible threat of prosecution under the N.C. Challenge statute for any future conduct. As the Court in *Susan B. Anthony List* put it, "[p]ast enforcement against the same conduct is good evidence that the threat of enforcement is not 'chimerical.'" *Susan B. Anthony List*, 573 U.S. at 164 (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)). There is no history of past enforcement in this case—Petitioner was not the subject of a complaint in past election cycles. And again, even if Petitioner was subject to past enforcement, Petitioner has failed to allege any course of future conduct that would subject them to similar proceedings.

This case is readily distinguishable from *Susan B. Anthony List*, in which the Petitioner and the dissent of the court of appeals below rely. In that decision, Susan B. Anthony List, a pro-life advocacy organization announced that it intended to put up a billboard asserting that Congressman Steven Driehaus supported taxpayer-funded abortion. *Id.* at 153–54. Driehaus filed a complaint with the Ohio Elections Commission alleging that Susan B. Anthony List violated Ohio's

campaign laws by making false statements about his voting record. *Id.* at 154. Susan B. Anthony List responded by filing a complaint in federal district court, alleging that the Ohio law infringed upon its First Amendment rights. *Id.* The district court dismissed for lack of standing and ripeness and the Court of Appeals for the Sixth Circuit affirmed. *Id.* at 156. This Court reversed, holding that Susan B. Anthony List had standing to pursue their legal claims before the statute had been enforced against them—i.e., before they had put up the billboard that allegedly would have been prohibited under Ohio Law. *See id.* at 168.

The Court found that Susan B. Anthony List sufficiently asserted an injury in fact because: (1) petitioners plead specific statements that they intended to make in the *future* and intent to engage in substantially similar activity in the future, (2) the Ohio statute at issue arguably covered and proscribed the subject matter of petitioners' intended *future* speech, and (3) there was a threat of future enforcement against petitioners because they were the subject of a complaint in a *past* election cycle. *Id.* at 161–63.

As described in detail, *supra* pp. 3–4, Petitioner has failed to allege that any of those conditions were met in this case. Petitioner has not alleged any future conduct that they intend to engage in that is arguably proscribed by the N.C. Challenge statute, or that any threat of future enforcement is more than merely conjectural due to past enforcement of the N.C. Challenge statute.

In sum, the threatened enforcement of the N.C. Challenge statute—even if administrative proceedings have begun—is not sufficiently imminent because Petitioner has failed to allege the existence of a future injury that is "certainly impending" or that there is "a substantial risk" that the harm will occur. *Susan B. Anthony List*, 573 U.S. at 158 (internal quotations omitted). For that reason, the Respondent respectfully requests that this Court affirm the decision of the court of appeals below dismissing Petitioner's case for lack of Article III standing.

B. The Federal Courts Do Not Have Jurisdiction Under Article III Because Petitioner's Challenge is Not Ripe for Review

In addition to featuring a plaintiff that has a proper stake in the litigation, constitutionally valid cases or controversies under Article III of the Constitution must come at the right time—that is, federal courts cannot consider constitutional issues prematurely. "Ripeness thus responds to a separation of powers concern by postponing judicial intervention until it is clear a dispute exists that can and should be resolved by a court." WILLIAM D. ARAIZA, UNDERSTANDING CONSTITUTIONAL LAW, 61 (5th ed. 2020).

The ripeness inquiry is twofold: First, the court must evaluate whether the issue in question is fit for judicial review at the time the suit is brought, and second, the court must evaluate the hardship to the parties that would ensue if judicial review were delayed. *See Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967). Fitness for review turns on whether the claim relies on facts that are still contingent, or whether the issue presents questions that are "purely legal, and will not be clarified by further factual development." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985). The hardship factor is prudential and requires an equitable consideration of the hardship that would occur if prompt judicial review were delayed. *See, e.g., Susan B. Anthony List*, 573 U.S. at 167.

The doctrines of standing and ripeness both originate from the same Article III limitations, and thus, the Court has increasingly recognized that the standing and ripeness often "boil down to the same question." *Id.* at 157 n.5 (internal quotations omitted) (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128, n.8 (2007)). As discussed, *supra* Section I.A, Petitioner has failed to allege an injury in fact sufficient to support Article III standing. This consideration weighs in favor of there being a lack of ripeness in this case as well. *See Susan B. Anthony List*, 573 U.S. at 157 n.5.

But even if Petitioner had alleged a sufficient injury in fact, this case is still not ripe for adjudication by the federal courts. Concededly, Petitioner's challenge to the N.C. Challenge statute may present an issue that is legal in nature—i.e., whether the N.C. Challenge statute conflicts with Article I, Section 5 of the Constitution. Even so, Petitioner has failed to adequately allege that they will suffer hardship if prompt judicial review by the federal courts were to be delayed.

The denial of prompt judicial review by the federal courts would not impose hardship on Petitioner because it would not force Petitioner to change the course of their future conduct. *See id.* at 167–68. Petitioner still intends to run for office and will have adequate opportunity in the New Columbia administrative hearing[1] and the state courts of New Columbia (if Petitioner is subject to an adverse decision) to establish that they did not violate the constitution, as well as challenge the constitutionality of the New Columbia statute.[2]

It is true that this Court has found that a reasonable threat of prosecution and the actual filing of an administrative action threatening sanctions may give rise to a ripe controversy. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 625–26 n.1 (1986). Similarly, here, an administrative action threatening to disqualify Petitioner from office has already commenced. Additionally, the potential consequences of an adverse ruling by the N.C. Superintendent of Elections are great—namely, that Petitioner will be disqualified from running from office.

That said, Petitioner has not yet been subject to an adverse ruling by the N.C. Superintendent of Elections. And, moreover, Petitioner failed to respond to any motions or

[1] *See* N.C. Gen. Stat. § 107–18.4(a)–(c) (describing procedure for administrative hearing conducted by the New Columbia Superintendent of Elections on an accelerated schedule).

[2] *See* N.C. Gen. Stat. § 107–18.6 (allowing for appeals of any final decision of the Superintendent under §107–18 directly to the New Columbia Supreme Court).

discovery requests in the upcoming administrative hearing before filing suit in federal court. The ultimate hardship that Petitioner may suffer as a result of the threatened enforcement of the N.C. Challenge statute is thus too conjectural and too far removed for the federal courts to intervene before these issues are hashed out in the state courts of New Columbia through the expedited process provided for in the N.C. Challenge statute. In short, it is simply too early for Petitioner to pursue their claim in the federal courts, even if an administrative action threatening to disqualify petitioner from office has already commenced in its early stages.

For the aforementioned reasons, Petitioner's claim is not ripe for review by the federal courts, and the Respondent respectfully requests that this Court affirm the court of appeals dismissal of Petitioner's case for lack of Article III standing.

C. The Federal Courts Should Abstain From Interfering With the Ongoing New Columbia Proceedings

"Our Federalism," Justice Black famously wrote, envisions "a system in which there is sensitivity to the legitimate interests of both State and National Governments," and "in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger v. Harris*, 401 U.S. 37, 44 (1971).

With these concerns of federalism and comity in mind, the Supreme Court formed the *Younger* abstention doctrine, under which federal courts abstain from enjoining ongoing state-court proceedings that are criminal in nature or would otherwise interfere with an important interest in the state's administration of its judicial system.[3] *Id.* at 53. Even the possible unconstitutionality

[3] *Younger* itself only addressed federal abstention with ongoing state criminal prosecution. *Younger* was later extended by the Court to civil judicial proceedings involving important state interests. *See Juidice v. Vail*, 430 U.S. 327, 335 (1977) (holding that the *Younger* abstention doctrine was applicable to a civil contempt proceeding where important state interest was implicated); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987) (holding that *Younger* abstention doctrine was applicable to state civil proceedings involving only private parties where an important state

of a statute on its face, the Court put it, does not warrant federal court interference with ongoing state proceedings, absent extreme circumstances. *Id.* at 54 ("[T[he possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it.").

The Court in *Middlesex County Ethics Commission. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982) devised a familiar three-pronged test to determine when *Younger* abstention is appropriate: (1) the state matter that is the purported basis for abstention must be an "ongoing state judicial proceeding," (2) the ongoing state judicial proceeding must implicate "important state interests," and (3) there must be an adequate opportunity in the state proceeding for the party resisting abstention to raise their constitutional challenge. *Middlesex*, 457 U.S. at 432. All three-prongs required for *Younger* abstention as laid out in *Middlesex* are easily met in this case.

First, the proceeding initiated by the N.C. Superintendent of Elections is ongoing. A final administrative decision has not been issued and state court appeals have not been exhausted. *See Huffman v. Pursue Ltd.*, 420 U.S. 592, 608 (1975) (concluding that *Younger* abstention was appropriate where the plaintiff had not yet exhausted state court appeals).

Second, that ongoing proceeding implicates the state of New Columbia's important interest in regulating the qualification and eligibility of its political candidates. *See Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (finding that states have "important regulatory interests" in enforcing state laws that govern "the selection and eligibility of candidates"); *Storer v. Brown*, 415 U.S. 724, 733 (1974) (recognizing that "a State has an interest, if not a duty, to protect the integrity of its

interest was implicated); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431–32 (1982) (holding that the comity and federalism concerns underlying the *Younger* abstention doctrine mandated federal abstention despite the fact that the state bar proceedings at issue were purely administrative).

political processes from frivolous or fraudulent candidacies" (quoting *Bullock v. Carter*, 405 U.S. 134, 145 (1972))).

And finally, there is adequate opportunity for Petitioner to raise their constitutional challenge in the state proceedings because the final decision of the N.C. Superintendent of Elections is immediately appealable to the New Columbia Supreme Court. *See* N.C. Gen. Stat. § 107–18.6; *see also Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986) (finding that "it is sufficient under *Middlesex* . . . that constitutional claims may be raised in state-court judicial review of the administrative proceeding").

In the past, the *Younger* abstention inquiry would end here. But the Court has since defined the outer bounds of the *Younger–Middlesex* analysis in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013). In that decision, Sprint filed a complaint with the Iowa Utilities Board ("IUB") asking for a declaration that it was proper under federal law to withhold charges for certain intercarrier access fees from a telecommunications carrier for long-distance calls. *Sprint*, 571 U.S. at 73–74. The IUB held that federal law allowed non-Sprint providers to extract access charges for the Sprint-originated long-distance calls. *Id.* at 74. Sprint appealed the IUB decision to the Iowa state courts and also filed suit in federal district court seeking declaratory and injunctive relief against enforcement of the IUB order. *Id.* The lower federal courts found *Younger* abstention appropriate, and the Supreme Court granted certiorari. *Id.* at 75.

The Court reversed, clarifying that even if *Younger* abstention is appropriate under *Middlesex*, it applies in only three types of cases: (1) state criminal prosecutions; (2) civil enforcement proceedings; and (3) civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions. *Id.* at 78. The Court held that the IUB proceeding was not a *Younger*-eligible civil enforcement proceeding because it was,

at heart, a proceeding to resolve a private dispute rather than a proceeding initiated or pursued by the state in a sovereign or quasi-criminal capacity. *Id.* at 80. Here, the ongoing New Columbia proceeding is not a state criminal prosecution, so at issue is whether the proceeding falls under the second or third categories of cases required by *Sprint*.

According to the Court in *Sprint*, decisions applying *Younger* to civil enforcement proceedings under *Sprint*'s second category have "generally concerned state proceedings 'akin to a criminal prosecution' in 'important respects.'" *Id.* at 79 (citing *Huffman*, 420 U.S. at 604). The Court in *Sprint* explained that such enforcement proceedings are characteristically initiated by a state actor, who is routinely a party to the action, to sanction the federal plaintiff. *Id.* at 79.

Here, Petitioner's challenge qualifies as a *Younger*-eligible civil enforcement proceeding under *Sprint*'s second category. The ongoing New Columbia civil enforcement proceeding is sufficiently akin to a criminal prosecution to warrant *Younger* abstention because like a criminal prosecution, an adverse decision in the New Columbia civil enforcement proceeding carries serious constitutional penalties. More to the point, the ongoing civil enforcement proceeding is set to determine whether Petitioner participated in insurrection—a federal crime that Petitioner could also be criminally prosecuted for that would similarly render Petitioner incapable of holding federal electoral office. *See* 18 U.S.C. § 2383.[4] Finally, the proceeding was initiated by the N.C. Superintendent of Elections, a state actor, and not private voters because under the N.C. Challenge statute, private voters themselves cannot initiate disqualification proceedings. *See* N.C. Gen. Stat. § 107–18.4(a)(1) (describing process for N.C. Superintendent of Elections to initiate administrative disqualification hearing after a challenge has been filed).

[4] "Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States . . . shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States."

Petitioner's challenge also qualifies as a *Younger*-eligible "civil proceeding[] involving certain orders . . . that are uniquely in furtherance of the state courts' ability to perform their judicial functions" under *Sprint*'s third category of cases. *Id.* at 78. Although no orders have been issued in the ongoing state enforcement proceeding, those orders are due to be issued soon under the expedited schedule provided for by the N.C. Challenge statute and would have already been issued had a stay not been granted pending these federal proceedings. Those orders will undeniably further the New Columbia state courts' ability to perform their judicial functions because New Columbia has established a unique judicial process for reviewing the qualifications of its congressional candidates that cannot be performed if the federal courts wrongfully pass first judgment over those qualifications. Such an interference with New Columbia's statutory scheme in adjudging the qualifications of its candidates goes too far in the other direction from *Younger*, such that the federal courts in exercising jurisdiction would "unduly interfere with the legitimate activities of the States." *See Younger*, 401 U.S. at 44.

In sum, the ongoing New Columbia proceeding is *Younger*-eligible because the proceeding meets each of the three traditional *Middlesex* factors and qualifies both as a civil enforcement proceeding that is akin to a criminal prosecution and a civil proceeding that implicates the New Columbia state courts' important interest in administering their judicial system. Accordingly, Respondent requests that this Court affirm the court of appeals decision to abstain from exercising jurisdiction over Petitioner's federal claims under *Younger*. A holding otherwise would upset well-established principles of federalism and comity that underly *Younger* and destroy the efficacy of challenge statutes like that of New Columbia's.

Applicant Details

First Name	**Cosima**
Last Name	**Schelfhout**
Citizenship Status	**U. S. Citizen**
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Contact Phone Number	**6319039481**

Applicant Education

BA/BS From	**Georgetown University**
Date of BA/BS	**May 2018**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 15, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Human Rights Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 8, 2023

The Honorable Judge Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I recently graduated from Columbia Law School and I am writing to apply for a clerkship in your chambers for the position open in 2024.

I plan to pursue a career in litigation and eventually work in the public interest. I am certain clerking in your chambers would prove invaluable in pursuit of these goals. I am also certain I have the skills necessary to be a successful district court clerk. Working as a journalist before law school, I learned to write and research effectively and efficiently. Covering breaking news, I translated complicated stories into simple narratives on tight timelines. I honed these skills at Columbia, where I acted as a teaching assistant for President Lee Bollinger and Professor Lori Damrosch, and as a Notes Editor for the Columbia Human Rights Law Review.

I have attached my resume, transcript, and writing sample. I have also included letters of recommendation from Professor Paul Shechtman (646-746-8657, paulshechtman1@gmail.com), Professor Lori F. Damrosch (212-854-3740, damrosch@law.columbia.edu), and Professor Michel Paradis (212-854-5332, mparadis@law.columbia.edu). The Honorable Judge Richard J. Sullivan (212-857-2450, Richard_Sullivan@ca2.uscourts.gov), whose seminar I took last fall, has kindly agreed to act as an additional reference. The writing sample I have included in this application is the final paper I wrote for Judge Sullivan's course, American Jurisprudence: Judicial Interpretation and the Role of the Courts.

Thank you for your consideration. Please contact me if you need additional information.

Respectfully,

Cosima Schelfhout

COSIMA SCHELFHOUT

39 W. 105th St., Apt. 1, New York, NY 10025 • 631-903-9481• cs4007@columbia.edu

EDUCATION

COLUMBIA LAW SCHOOL, New York, NY
J.D., received May 2023
Honors: James Kent Scholar 2021–22 and 2022–23 (for outstanding academic achievement)
Activities: *Columbia Human Rights Law Review*, Notes Editor
Teaching Assistant for International Law, Professor Damrosch (Fall 2022)
Teaching Assistant for Freedom of Speech and the Press, President Bollinger (Fall 2021)
Research Assistant, TrialWatch

GEORGETOWN UNIVERSITY, WALSH SCHOOL OF FOREIGN SERVICE, Washington, DC
B.S.F.S., *magna cum laude*, received May 2018
Activities: *The Hoya,* Features Writer
Georgetown Journal of International Affairs, Section Editor

EXPERIENCE

DISTRICT JUDGE HON. RONNIE ABRAMS, New York, NY
Extern January 2023–May 2023
Conducted legal research on personal jurisdiction, discovery, and class action certification. Attended pre-trial conferences and trials.

KOSOVO SPECIALIST CHAMBERS, The Hague, Netherlands
Legal Intern, Defense Team for Kadri Veseli January 2022–August 2022
Drafted pre-trial motions and prepared memoranda on superior responsibility, judicial notice, and joint criminal enterprise. Conducted evidence review and attended pre-trial hearings.

QUEEN'S COUNTY DISTRICT ATTORNEY'S OFFICE, New York, NY
Extern September 2021−December 2021
Acted as the lead prosecutor on two misdemeanor domestic violence cases at Queens Family Justice Center. Negotiated plea deals, subpoenaed evidence, drafted complaints, and argued pre-trial motions.

U.S. ATTORNEY'S OFFICE, S.D.N.Y., New York, NY
Legal Intern, Criminal Division June 2021−August 2021
Drafted briefs for the Second Circuit. Researched and wrote memoranda. Attended depositions and trials.

BBC NEWS, Washington, DC
Producer September 2018−July 2019
Newsgathering Intern January 2018−September 2018
Secured interviews and conducted research for the production of television specials for BBC World News on subjects including the 2018-19 public trial of El Chapo and first anniversary of the Parkland shooting. Monitored wires and briefed correspondents before live broadcasts.

BBC NEWS NORTH AMERICA EDITOR, JON SOPEL, Washington, DC
Research Assistant December 2018−June 2019
Conducted original research for *A Year at the Circus: Inside Trump's White House (Penguin Books).*

LANGUAGE SKILLS: French (proficient)

INTERESTS: Long-distance running, 20th Century American Poetry**,** travel in Sub-Saharan Africa

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CLS TRANSCRIPT (Unofficial)

05/18/2023 11:43:31

Program: Juris Doctor

Cosima Schelfhout

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6410-1	Constitution and Foreign Affairs	Damrosch, Lori Fisler	3.0	A
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	B+
L6661-1	Ex. Federal Court Clerk - SDNY	Radvany, Paul	1.0	CR
L6661-2	Ex. Federal Court Clerk - SDNY - Fieldwork	Radvany, Paul	3.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L8876-1	International Criminal Investigations	Davis, Frederick	3.0	A

Total Registered Points: 13.0

Total Earned Points: 13.0

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6425-1	Federal Courts	Metzger, Gillian	4.0	A-
L6655-1	Human Rights Law Review		0.0	CR
L6274-3	Professional Responsibility	Rose, Kathy	2.0	A-
L8082-1	S. American Jurisprudence: Judicial Interpretation and The Role of Courts	Sullivan, Richard	2.0	A
L8169-1	S. Media Law	Balin, Robert; Klaris, Edward	2.0	A
L6822-1	Teaching Fellows	Damrosch, Lori Fisler	3.0	CR

Total Registered Points: 13.0

Total Earned Points: 13.0

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	A
L6655-1	Human Rights Law Review		0.0	CR
L6269-1	International Law	Damrosch, Lori Fisler	4.0	A
L6169-3	Legislation and Regulation	Bulman-Pozen, Jessica	4.0	B+
L6695-1	Supervised JD Experiential Study	Paradis, Michel	3.0	A
L6683-1	Supervised Research Paper	Paradis, Michel	1.0	A

Total Registered Points: 15.0

Total Earned Points: 15.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6241-1	Evidence	Shechtman, Paul	3.0	A
L6607-1	Ex. Domestic Violence Prosecution	Camillo, Jennifer; Kessler, Scott	2.0	A-
L6607-2	Ex. Domestic Violence Prosecution - Fieldwork	Camillo, Jennifer; Kessler, Scott	2.0	CR
L6655-1	Human Rights Law Review		0.0	CR
L8079-1	Jurisprudence of War [Minor Writing Credit - Earned]	Paradis, Michel	3.0	A
L6675-1	Major Writing Credit	Paradis, Michel	0.0	CR
L6683-1	Supervised Research Paper	Paradis, Michel	2.0	A

Total Registered Points: 12.0

Total Earned Points: 12.0

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6105-1	Contracts	Scott, Robert	4.0	A-
L6108-3	Criminal Law	Liebman, James S.	3.0	B+
L6679-1	Foundation Year Moot Court	Strauss, Ilene	0.0	CR
L6229-1	Ideas of the First Amendment	Abrams, Floyd; Blasi, Vincent	4.0	A
L6130-2	Legal Methods II: Transnational Law and Legal Process	Cleveland, Sarah	1.0	CR
L6121-2	Legal Practice Workshop II	Olds, Victor	1.0	P
L6116-3	Property	Glass, Maeve	4.0	CR

Total Registered Points: 17.0

Total Earned Points: 17.0

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-1	Civil Procedure	Lynch, Gerard E.	4.0	CR
L6133-2	Constitutional Law	Pozen, David	4.0	B
L6113-1	Legal Methods	Ginsburg, Jane C.	1.0	CR
L6115-2	Legal Practice Workshop I	Olds, Victor; Yoon, Nam Jin	2.0	P
L6118-1	Torts	Blasi, Vincent	4.0	B

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 85.0

Total Earned JD Program Points: 85.0

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2022-23	James Kent Scholar	3L
2021-22	James Kent Scholar	2L

Pro Bono Work

Type	Hours
Mandatory	40.0
Voluntary	40.0

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Cosima Schelfhout
ID:: 804711005

Student Address:
Date of Birth: 20-Mar

Course Level: Undergraduate

Other Colleges Attended:
GEORGE WASHINGTON UNIVERSITY
WASHINGTON DC

Degrees Awarded:
B.S. in Foreign Service May 19, 2018
School of Foreign Service
Major: International Politics
Minor: French
Concentration: Law
Degree GPA: 3.851
Honors: Magna Cum Laude

Transfer Credit:
Advanced Placement
U.S. Political Systems 3.00
School Total: 3.00

Transfer Credit:
George Washington University
Principles of Economics I 3.00
World History 1500 - Present 3.00
University Writing 3.00
Principles of Economics II 3.00
Intro-Intl Affrs:Wash Perspect 3.00
Introduction to Philosophy 3.00
Intro to Comparative Politics 3.00
Basic French II 3.00
Intermediate French I 3.00
School Total: 27.00
Language Proficiency: French, Spring 2018
Entering Program:
School of Foreign Service
B.S. in Foreign Service
Major: International Affairs

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2015						
ECON	243	International Trade	3.00	A	12.00	
ENGL	130	Global 18C Lit & Culture	3.00	A	12.00	
FREN	032	Intensive Intermediate French	6.00	A	24.00	
PHIL	099	Political & Social Thought	4.00	A	16.00	

First Honors

	EHrs	QHrs	QPts	GPA
Current	16.00	16.00	64.00	4.000

----------Continued on Next Column----------

Program Changed to:
Major: International Politics

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2016						
ECON	244	International Finance	3.00	A-	11.01	
FREN	111	Intensive Adv French I	5.00	A-	18.35	
HIST	173	East European History II	3.00	A-	11.01	
INAF	361	Institns & Policymaking in Afr	3.00	A-	11.01	
THEO	001	The Problem of God Second Honors	3.00	A	12.00	

	EHrs	QHrs	QPts	GPA
Current	17.00	17.00	63.38	3.728

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2016						
FREN	102	Adv Fren II:Contemp Civilizatn	3.00	A	12.00	
GOVT	325	Dept Sem:Children/Pol/ Pub Pol	3.00	A	12.00	
GOVT	460	Ethical Iss Intrnl Reltns	3.00	A	12.00	
HIST	109	The Islamic World	3.00	A	12.00	
JUPS	408	Afr Persp:Peace,Cnflct,Justice	3.00	A	12.00	

First Honors

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	60.00	4.000

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2017						
GU/Morocco						
Intensive Introduction to Colloquial Moroccan Arabic			1.00	A-		
Language in Context: Novice Abroad						
Modern Standard Arabic Language in Context: Novice Abroad			6.00	A-		
Arab Media and Issues of Politics and Culture			3.00	A		
North African Politics			3.00	A		
Islam in Morocco and North Africa			3.00	A-		
School Total:			16.00			

	EHrs	QHrs	QPts	GPA
Current	0.00	0.00	0.00	0.000

Subj	Crs	Title	Crd	Grd	Pts	R
Fall 2017						
FREN	151	CBL:Adv French Grammar/ Writing	3.00	A-	11.01	
GOVT	442	Civil War in Developing Countr	3.00	A	12.00	
INAF	320	Quant Methods:Intrnl Affairs	3.00	B+	9.99	
INAF	355	Immigrants, Refugees & State	3.00	B+	9.99	
JUPS	215	Special Topics: Peace is Pssbl	3.00	A	12.00	

----------Continued on Next Page----------

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Cosima Schelfhout
ID:: 804711005

Dean's List

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	54.99	3.666

Subj	Crs	Title	Crd	Grd	Pts	R
Spring 2018						
ENGL	153	19C American Literature	3.00	A	12.00	
ENGL	161	20th Century American Poetry	3.00	A-	11.01	
FREN	161	Topics French Oral Proficiency	3.00	A	12.00	
GOVT	489	PopularSovereignty&Rule of Law	3.00	A	12.00	
GOVT	547	Terrorism	3.00	A-	11.01	
INAF	008	Map of the Modern World	1.00	S	0.00	
		Second Honors				

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	16.00	15.00	58.02	3.868
Cumulative	125.00	78.00	300.39	3.851

End of Undergraduate Record

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to give my strongest possible recommendation for Cosima Schelfhout to be a clerk in your chambers. I have had the pleasure of knowing Cosima for the past two years at Columbia as a student in my seminar, the Jurisprudence of War, as well as the faculty supervisor of her note and her independent research project with the Kosovo Specialist Chambers. In all three capacities, I found Cosima creative, hard-working, and a genuine pleasure to worth with. She is an avid researcher and clear writer. And I have been consistently impressed by her, exceptional, legal acumen, dedication, and work ethic.

I first taught Cosima in the fall of her second year at Columbia, where she was an exceptional student. As we explored the President's War Powers and the application of the Constitution abroad, Cosima could consistently be relied upon to participate meaningfully in class discussions, to ask pertinent and incisive questions, and to engage both respectfully and meaningfully with her fellow students on what where often very contentious topics. In our brief conversations before and after class, I was impressed by her earnest enthusiasm for the subject and the law more generally.

Cosima has demonstrated an outstanding ability to conduct thorough legal research and distill complex legal concepts into clear and concise written analyses. For her term paper, Cosima produced a superb and original study of the duties that the Geneva Conventions impose upon states in their interactions with non-state armed groups. It was one of the best and most memorable papers I have graded in the decade I have taught at Columbia, and the fifteen years I have taught in the legal academy overall. Unsurprisingly, Cosima received an A.

I also had the privilege of serving as Cosima's note supervisor during her second year. I was instantly impressed by the originality of her proposal to study the legal obligations that states incur to civilian populations as they withdraw from conflict situations. This was on the heels of the United States' withdrawal from Afghanistan, and so the subject was topical as it was neglected by other scholars. And over the course of the year, Cosima proved herself to be diligent, never satisfied, and yet a genuine joy to work with. She worked independently, was receptive to feedback, and was always as happy to accept good suggestions and as she was tactful in rejecting bad ones. The result was a brilliant synthesis of international treaties, customary law, history, and legal commentary.

I continued supervising Cosima when she was hired as an intern for a defense team representing a Kosovar politician accused of war crimes before an international tribunal in the Hague. Cosima acquired her role on the team independently of Columbia and worked diligently through the university bureaucracy to ensure she received credit for her work. Over the course of several months, Cosima routinely sent me the work she completed for the internship, including draft motions and research memos. Her supervisors, the British Barrister Ben Emmerson and American Attorney Andrew Strong, also provided me with glowing feedback. And it was obvious why.

Over the past two years, in these diverse settings, I have gotten an excellent impression of Cosima's many skills. In addition to her talents, she has demonstrated an exceptional ability to manage her time and many burdens diligently. It is a sign of her professionalism and maturity that I never once had to "follow up" with her in any context. Instead, she proactively sent me her work, arranged for meetings well in advance, and was always punctual and prepared.

Finally, I would be remiss if I did not say a few words about Cosima's interpersonal skills. She is a genuine pleasure to work with. To talk with her is to be struck by her refreshingly earnest curiosity, her professional maturity, and her genuine friendliness. Combined with her obvious intellectual gifts and work ethic, she is precisely the kind of person who thrives in collaborative environments. Given the right opportunities, she will be a leading light of the profession in the decades to come.

In short, having taught Cosima and supervised her for the past two years, I cannot recommend her highly enough. I say this not only for her benefit but because she will be an invaluable asset to you and the legal profession. I give her my highest recommendation.

I am happy to support his candidacy further or answer any questions by phone (1.212.252.2142) or email (mp3373@columbia.edu).

Sincerely,

Michel Paradis

PAUL SHECHTMAN
335 Greenwich Street, Apt. 2C
New York, NY 10013
917-796-5123

April 18, 2023

To Whom It May Concern:

I am writing to recommend Cosmina Schelfhout for a clerkship. Cosmina was my student at Columbia Law School in Evidence and Criminal Adjudication and received an A in both courses. Her exams were among the highest in each class and showed a complete command of the material, as did her class participation.

Cosmina approached me after class one night to talk about her experience as an intern at the U.S. Attorney's Office for the Southern District of New York in the summer after her first year in law school. (I did two stints in that Office, the second as Chief of the Criminal Division.) Her enthusiasm was evident. She also told me about working in the Hague and her interest in human rights law. As a result, I arranged for her to meet with a former Southern District AUSA who had worked in the Hague, and the two hit it off; the meeting proved enjoyable for them both. What is plain is that Cosmina takes initiative: she wants a career as a litigator, most likely in the public sector, and she has used her time in law school (and law school summers) to advance that goal.

Cosmina has all the other characteristics that make for a good law clerk: she is unpretentious and has a keen sense of humor. Although she did no writing for my classes, her extensive background in journalism suggests that she will not fail you on that score. High grades and a winning way are a receipt for a first-rate law clerk, and I have no doubt that Cosmina will be just that. I recommend her to you without reservation.

Sincerely,

Paul Shechtman

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to provide a very enthusiastic recommendation for Cosima Schelfhout, of Columbia Law School's JD class of 2023, who is an applicant for a clerkship in your chambers. I have known Cosima in multiple contexts during her law school studies and can attest to her outstanding qualifications and suitability to serve as your law clerk. This letter updates my letter initially prepared in April 2023, which was submitted via OSCAR prior to receipt of Cosima's final paper for my Spring 2023 class and prior to the award of final honors to the class of 2023 at graduation. These latest developments confirm my enthusiasm for Cosima's application, and I address them toward the end of this updated later.

Cosima took my course in International Law in the Spring 2022 semester, during her second year in law school. This was a medium-sized class of about 35 students, in which it was possible to get to know the students reasonably well and appreciate their strengths and weaknesses. Cosima impressed me early on for her willingness to contribute to class discussions, in which she demonstrated thorough preparation of difficult materials and insights into the theory and practice of international law; over the course of the semester, she ranked near the top in overall class participation. My favorable impressions were confirmed by her excellent performance on the written components of assessment for the course, consisting of a research exercise with mandatory and optional parts, and a blind-graded examination. Cosima turned in one of the very best research exercises, which, like the examination, was anonymously graded. The mandatory part of the research exercise instructed the students to locate bilateral and multilateral treaties with relevance to the Russian armed attack on Ukraine and to correlate treaty commitments with voting patterns in the United Nations General Assembly on a resolution deploring the attack and demanding withdrawal of Russian military forces. The optional part entailed research into treaties on suppression of crimes of international concern. The submission also included a reflective essay on the results of the treaty research. When the veil of anonymity was lifted, it was no surprise that Cosima's paper had achieved high marks on all components of the research exercise. Her blind-graded exam answers likewise placed her in the group qualifying for the highest grades. Based on all measures of evaluation, she was awarded the grade of "A," one of only a handful of "A" grades awarded in that class.

In light of her superior performance in my Spring 2022 class, I invited Cosima to serve as my teaching assistant for the Fall 2022 International Law class. In that role, she conducted weekly review sessions with the students, held periodic TA office hours, and assisted in the students' exam preparation. She carried out those responsibilities capably and I was very pleased with her work.

In the summer of 2022, when I lectured at The Hague Academy of International Law, I reconnected with Cosima who was then serving as an intern with the Kosovo Specialist Chambers based in The Hague, working with the defense team on a case involving war crimes in the former Yugoslavia. In that context, I learned of her interest in criminal law and encouraged her to develop that interest through future research and writing in her third year of law school.

In the 2022-2023 academic year, not only was Cosima my Fall 2022 teaching assistant, but I interacted with her through the Salzburg Cutler Global Fellows program, for which she was competitively selected to represent Columbia at a two-day seminar in Washington and to present her work-in-progress on a substantial research paper at a workshop in which I was a faculty commentator. For the seminar, she presented a paper with the title "Jus Post Bellum: Ensuring Protections for Civilians in Post-Conflict Environments," which she has developed as a full-scale note manuscript. The note argues for an interpretation of international humanitarian law in which states engaged in armed conflict incur an obligation to exercise due diligence to ensure protection of civilians in the post-conflict environment. Taking the U.S. withdrawal of armed forces from Afghanistan in August 2021 as illustrative of post-conflict problems in civilian protection, she analyzes the various strands of the laws of armed conflict to build the case for legal obligations not only in resorting to war (jus ad bellum) and during wartime (jus in bello), but also in preparing during war for the phase after wartime: jus post bellum. The note is deeply researched with an original and compelling humanitarian argument. It displays her skills at research and writing, which have been further honed through her work as a notes editor of the Columbia Human Rights Law Review.

In the Spring 2023 semester, Cosima took my course on the Constitution and Foreign Affairs and exercised the option to write a research paper in lieu of the examination. As her research topic, she chose the problem of foreign sovereign immunity as applied to criminal prosecution of foreign government-owned corporations – an issue that was pending at the Supreme Court in the Halkbank case for most of the semester and resulted in a Supreme Court ruling handed down in April 2023, shortly before the paper was due. That ruling resolved a question on which the Court had granted certiorari – whether the Foreign Sovereign Immunities Act provides immunity from criminal as well as civil jurisdiction – and left other questions open to be decided on remand. Cosima had to do the bulk of her research on this interesting topic before knowing which way the Court would rule; and then after the judgment came down, she had to finalize the paper in a matter of days, focusing mainly on the issues to be addressed on remand. Her analysis considers the open questions of whether customary international law on foreign state immunity binds U.S. states as a matter of federal common law, and also whether the Executive Branch could shield foreign states from criminal prosecutions in U.S. state courts through the vehicle of binding suggestions of immunity. She analyzes these issues against the backdrop of various modalities of constitutional argument, with attention to the Founders' views on creating "one nation" in foreign affairs and historical practice concerning Executive acts to make determinations of immunity binding on state as

well as federal courts. I was very pleased with the paper, which confirms the views I had previously formed on the basis of her earlier work that she has research and writing abilities at the high level expected of a federal law clerk.

In this class, as in all the other contexts in which I have seen her in action, she was an active contributor in full command of complex material. Because of the high quality of the paper and her class participation, she again received the grade of "A," the highest grade awarded.

My high opinion of Cosima's accomplishments is evidently shared by my Columbia law faculty colleagues, as she has attained academic honors at the James Kent Scholar level, which is Columbia's top bracket of academic distinction and evidence of her qualifications for a top clerkship. Now that her transcript for her final semester is in hand, I am pleased to observe that she has been awarded the Kent Scholar distinction for both the 2021-2022 and 2022-2023 academic years. Only a small fraction of her classmates have earned this high honor twice.

In connection with preparing this recommendation, I had the opportunity to review a packet of materials which Cosima shared with me, which included a paper she had written the previous semester for the Seminar on American Jurisprudence: Judicial Interpretation and the Role of Courts. The title of the paper, "The Inconsistent Case for Originalism," caught my eye and I read it out of interest and for its connections to the themes of constitutional interpretation that are central to my course on the Constitution and Foreign Affairs (in which she was then working on the Halkbank paper; see above). The Originalism paper reviews selected writings on originalism by three of the most influential exponents of that method – Judge Robert Bork, Justice Antonin Scalia, and Justice Clarence Thomas – and shows that each of these authors resorts to non-originalist methods in their advocacy of originalism: that is, they invoke the very methods they criticize – for example, consequentialist arguments – in support of their contention that originalism is preferable to other modalities. It offers an intriguing perspective on one of the central problems of constitutional methodology of recent decades and shows her aptitude for legal writing.

In all the settings in which I have worked with her and learned of her work with others, Cosima has demonstrated the range of qualities that you would want to have in your law clerk. I also know of her passionate interests in human rights, criminal law and procedure, and constitutional law – all of which she will bring to bear in a clerkship. I urge you to invite her for an interview and select her to serve in your chambers.

Sincerely yours,

Lori Fisler Damrosch

Lori Damrosch - damrosch@law.columbia.edu - 212-854-3740

COSIMA SCHELFHOUT
39 W. 105th St., Apt. 1 New York, NY 10025 • 631-903-9481• cs4007@columbia.edu

I wrote the following paper for American Jurisprudence: Judicial Interpretation and the Role of the Courts, which I took during the fall semester of 3L. The Honorable Judge Richard J. Sullivan taught the course and has generously agreed to act as a reference. In the paper, I argue that originalism's central proponents, namely Robert Bork, Antonin Scalia, and Clarence Thomas, fail to make originalist arguments for the method of statutory interpretation across their many works. In doing so, I categorize the kinds of arguments they employ instead and explore the implications of their reliance on alternative schools of interpretation.

Cosima Schelfhout
Fall 2022: American Jurisprudence
Final Paper

THE INCONSISTENT CASE FOR ORIGINALISM

INTRODUCTION

Originalism is a method of constitutional interpretation that looks to the public meaning of the text when ratified.[1] While variations of the method have existed since the founding, originalism took its modern form in the 1980s.[2] Robert Bork elevated discussions of originalism to the national stage during his U.S. Supreme Court hearings in 1987,[3] and by 1991 two Supreme Court justices adhered to the school of interpretation.[4] Today, Bork, Scalia, and Thomas rank among originalism's central proponents—having advocated for its adoption in opinions and scholarly articles. The authors argue that judges must be bound by the Constitution's original meaning for a host of reasons, including dangers inherent in alternative schools of interpretation ("non-originalist exegesis"), [5] the structure of the Constitution, and the tendency of judges to "mistake their own predilections for the law."[6] Among these reasons, however, one is hard-pressed to find an "originalist" argument for employing the school of interpretation—an argument that the "original meaning" of the Constitution requires judges to employ originalism.[7]

[1] JOHNATHAN O'NEILL, ORIGINALISM IN AMERICAN LAW AND POLITICS: A CONSTITUTIONAL HISTORY 3 (2005) (describing originalism as "an attempt to discover the public meaning [of the Constitution] for those who made it law"). While some "originalists," such as Raoul Berger, argue that the meaning of the Constitution is grounded in the "subjective intentions of the framers," Scalia and Bork advocate for a "public meaning" version of originalism. Bret Boyce, *Originalism and the Fourteenth Amendment,* 33 WAKE FOREST L. REV. 915-916 (1998). While Bork often refers to "original intent" as opposed to "original understanding" in his earlier works, he clarifies in *The Tempting of America*, that he refers to original "intent" as a "shorthand formulation" for "what the public at the time would have understood the words to mean." Robert H. Bork, THE TEMPTING OF AMERICA 154 (1990).
[2] Boyce argues that Originalism was first coined by Paul Brest in *The Misconceived Quest for the Original Understanding 60 B.U. L. REV. 204, 204 (1980).* He notes that while similar schools, such as "interpretivism" and "intentionalism" may be traced to earlier decades, "[t]he emergence of modern originalism as a consistent theory of constitutional interpretation" developed relatively recently as a response to legal realism. Boyce*, supra* note 1, at. 909-910.
[3] O'NEILL, *supra* note 1, at 3.
[4] *Current Members*, THE SUPREME COURT OF THE UNITED STATES, WWW.SUPREMECOURT.GOV/ABOUT.
[5] Antonin Scalia, *Originalism: The Lesser Evil*, 57 CIN. L.R. 850, 863 (1989).
[6] *Id. See* discussion *infra* Section I.A.
[7] *See* discussion *infra* Sections I. A.

Cosima Schelfhout
Fall 2022: American Jurisprudence
Final Paper

Among the sample of works reviewed, Scalia and Bork discuss the original meaning of the Constitution with regard to constitutional interpretation only once and Thomas, who has published less scholarly material on the matter, fails to do so at all.[8]

One might argue that the authors fail to make exclusively or even predominantly originalist arguments for originalism because the public meaning of the Constitution at the time of its ratification did not include an understanding that federal judges would employ originalism. Or perhaps, that it included the opposite: an understanding that federal judges would employ a particular non-originalist interpretative method. The history, however, is inconclusive. While Scalia and Bork point to evidence that some in the legal community embraced an early form of originalism around the time the Constitution was drafted,[9] several works suggest that early originalism was neither dominant nor consistently applied during the founding.[10]

Whether or not the historical record supports the case for originalism, Bork, Scalia, and Thomas' failure to make an exclusively or mostly originalist argument for the method is significant. In eschewing text-based arguments, Scalia, Bork, and Thomas adopt other schools of interpretation of which the authors are especially critical. In doing so, the authors make several important concessions about originalism. First, the authors imply democratic consent for the

[8] For this paper, I examined the following works of Scalia: Antonin Scalia, *Originalism: The Lesser Evil*, 57 CIN. L.R. 850, 863 (1989), ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012), Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of the United States Federal Courts in Interpreting the Constitution and Laws*, THE TANNER LECTURES OF HUMAN VALUES; *Original Intent and a Living Constitution: a Conversation between Scalia and Breyer*, SUPREME COURT HISTORICAL SOCIETY, supremecourthistory.org/info/supremecourthistory_society_events. I also examined the following works by Robert Bork: Robert H. Bork, THE TEMPTING OF AMERICA (1990); Robert H. Bork, *Original Intent: The Only Legitimate Basis for Constitutional Decision Making*, JUDGES J. (1987); *Robert H. Bork, The Constitution, Original Intent, and Economic Rights,* 23 SAN DIEGO L. REV. (1986); Robert H. Bork, *The Uphill Fight: Can John Roberts Restore the Constitutional Order?* 57 NAT. R. (2005). Finally, I reviewed the following works by Thomas: Clarence Thomas, *Judging, 45 U. KAN. L. REV. 1 (1996); Clarence Thomas, How to Read the Constitution,* WRISTON LECTURE TO THE MANHATTAN INSTITUTE *(2008).*

[9] *See* discussion *Infra* Section II.A.

[10] *Id.*

Cosima Schelfhout
Fall 2022: American Jurisprudence
Final Paper

method—a primary justification for the necessity of originalism—may be lacking. Second, the authors suggest that relying on non-originalist methods of interpretation may be necessary when the historical record is unclear. Finally, the authors indicate that other methods of interpretation may be necessary to legitimize certain constitutional interpretations.

While several authors have challenged the historical bases of originalism,[11]and some have pointed to the failure of its proponents to make an originalist case for the method,[12] few works have categorized the types of arguments Bork, Scalia, and Thomas rely on instead. Moreover, few have assessed the implications of the authors' reliance on alternative methods of interpretation. As such, an analysis of the implications of originalists' use of alternative interpretive styles is necessary to gain a fuller understanding of originalism and the arguments made in its favor.

I. Bases of Originalism

A. Alternative Methods

Originalism emphasizes near complete reliance on the text of the Constitution and history, cautioning against consideration of "abstract purposes" and consequences.[13] In their writings on the subject, however, neither Scalia, Bork, nor Thomas, rely exclusively on the text of the Constitution or the history surrounding its adoption. Rather, the authors look to the Constitution's abstract aims and the practical consequences of employing originalism or failing to do so. Bork

[11] *See* Richard S. Kay*, Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses, 82* Nw. U. L. REV. 226, 280 (1988); Jack N. Rakove*, The Original Intention of Original Understanding, 13 CONST. COMMENTARY 159, 160 (1996).*
[12] Stephen Breyer, *Tanner Lecture on Human Values* 2-3 (2004).
[13] *Id.* at 1 (noting that originalism "cautions strongly against reliance on…abstract purposes and the assessment of consequences" and looks instead to "language…structure, history and tradition"); *See also*, Jamal Greene*, Rule Originalism, 116 COLUM. L.* REV. 1639 (2016) (describing the originalism "toolkit" to include, in addition to the text, "founding-era dictionaries, The Federalist Papers, the Convention debates, and debates in the state ratifying conventions").

also presents arguments rooted in "common sense" that are largely absent in both Scalia's and Thomas' works.

Scalia, Bork, and Thomas reason that judges must adopt originalism because the structure of the Constitution commands it. Scalia argues that the judiciary's most important function, judicial review, would be rendered futile if the Constitution's meaning could change over time. For the judiciary to check the other branches, he contends, the Constitution's meaning must be fixed.[14] Scalia goes on to discuss the purpose of a constitution in a democratic government. He argues constitutional guarantees are designed to "prevent the law from reflecting certain changes in original values that the society adopting the Constitution thinks fundamentally undesirable."[15] He adds that it is the legislature's role, as opposed to the judiciary's, to ensure that laws reflect modern values.[16] Bork makes a similar argument. He contends the only way to keep judges from exercising legislative power to bind them by law "that is independent of their own views of the desirable."[17] He points to that the amendment provision of the Constitution as further evidence that judges may not shift the meaning the Constitution, stressing the provision precludes gradual changes to the text's meaning over time.[18] Bork also makes a federalism argument in favor of originalism, stressing that the Constitution's language must be interpreted literally to preserve the delicate federal-state balance of powers envisioned by the drafters.[19] Thomas echoes Scalia and Bork's separation of powers concerns. Drawing attention to Article III, he stresses that originalism is necessary to give meaning to the Constitution's assurances of life tenure and an irreducible salary. Such provisions, he argues, ensure the judiciary's independence—

[14] *The Lesser Evil, supra* note 8, 854.
[15] *Id.* at 862.
[16] TEMPTING OF AMERICA *supra* note 8, at 151-155.
[17] *The Uphill Fight, supra* note 8, at 3-4.
[18] TEMPTING OF AMERICA at 143.
[19] *Id.* at 139-140.

independence that would be undermined if judges were freed from the confines of original meaning.[20] Thomas also notes the Constitution's failure to provide formal checks on the judiciary's power as evidence that the text of the Constitution must provide a meaningful limitation on judge's power of interpretation.[21] Finally, and perhaps most significantly, Thomas reiterates Scalia's argument that the authority of the judiciary derives entirely from the "will of the people expressed by the Constitution." Thus, he suggests, judges exceed their authority when they go beyond the text's original meaning.

While the authors rely in part on separation of powers and federalism, Scalia and Bork ultimately frame their arguments as a choice between alternatives; both authors stress the defects of non-originalism and the relative strengths of originalism. Scalia argues non-organist methods lack consistency, as they to fail to specify which "fundamental values" should replace original meaning, and ignore the extent to which the expansion of rights often entails the contraction of other rights.[22] While originalism is challenging to apply[23] and often "too difficult to swallow,"[24] it provides a consistent guide for judges that mitigates the impact of incorrect decisions by tying judges to history and reduces the extent to which judges will "mistake their own predilections for the law."[25] In sum, Scalia argues originalism's weakness are "less likely to aggravate the most significance weakness of the system of judicial review."[26] Similarly, Bork stresses that originalism is the method best suited to combat the politicization of the courts[27] and to confer

[20] *How to Read the Constitution, supra* note 8, at 2.
[21] *Id.*
[22] *The Lesser Evil, supra* note 7, at 852-863.
[23] *Id.* at 856 (arguing that "plumb(ing) the original understanding" of an ancient text is "extremely difficult" because it requires considering an "enormous mass of material" and an evaluation into reliability)
[24] *Id.* at 861 (arguing that some original meanings are so out of touch with modern understanding that they must not be sustained by courts if originalism is to be considered a "practical theory of exegesis").
[25] *Id*. at 863.
[26] *Id.*
[27] *Original Intent*, *supra* note 7, at 14 (arguing that if the Constitution lacks a fixed meaning, "there would be no law other than the will of the judge").

legitimacy to the judicial process.[28] While Thomas makes relatively few consequentialist arguments, he stresses that originalism is more likely to produce impartial results, as other methods of interpretation "have no more basis on the Constitution than the latest football scores."[29] Finally, Bork also makes an appeal to common sense, contending that lawmakers generally intend to bind judges to the text "as generally understood at the enactment."[30] As such, he argues, judges should assume the same rule applies the Constitution and adopt "the common, everyday view of what the law is."[31]

B. An Originalist Case

As evidenced, neither Scalia, Bork nor Thomas relies entirely on originalism to make their case. Scalia and Bork, however, incorporate originalist arguments, among others, in their larger works.[32] For several reasons, however, these arguments are unpersuasive.

First, the inclusion of non-originalist arguments alone, alongside originalist accounts, contradicts originalism's emphasis on text and history. Bork occasionally acknowledges his reliance on other interpretative methods, writing that judges would be required to adopt originalism"[e]ven if evidence of what the founders thought about the judicial role were unavailable."[33] He explains that even if the founders "rejected" originalism, "we would need to invent it" because "no other method of constitutional adjudication can confine court to a defined sphere of authority" and thus prevent them from assuming legislative powers.[34]

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[28] TEMPTING OF AMERICA, *supra* note 7, at 2 (arguing that the rise of non-originalist methods of interpretation, such as living constitutionalism, "delegitimize the law in the eyes of the American people")
[29] How to Read the Constitution, *supra* note 7, at 2.
[30] TEMPTING OF AMERICA, *supra* note 7, at 5.
[31] *Id.*
[32] Scalia makes an originalist argument in Chapter 7 of *Reading Law.* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012). Bork makes an originalist argument in Chapter 7 of The *Tempting of America*. Robert H. Bork, THE TEMPTING OF AMERICA (1990).
[33] TEMPTING OF AMERICA, *supra* note 7, at 154-155.
[34] *Id*.

Second, neither Bork nor Scalia presents evidence to suggest originalism—or something close to it—dominated at the time of the founding. Scalia, for example, cites two Scottish statutes enacted in the 15th and 16th centuries that forbade jurists from looking into a statute's "intent and effect," selections of William Blackstone's *Commentaries on the Laws of England*, and a James Madison quote from 1821, in which the Founding Father wrote the Constitution should be "fixed and known."[35] Scalia argues the materials signal that originalism is an "age-old idea in [Anglo-Saxon] jurisprudence."[36] While Scalia is correct to suggest the materials prove originalism was an *idea* circulating American jurisprudence at the time of the founding, they fall short of indicating originalism was the predominant form of judicial interpretation practiced during the Constitution's ratification.[37] Unlike Scalia, Bork claims that constitutional interpretation based on original understanding "was once the dominant view of constitutional law."[38] Before making his case, however, Bork concedes that the relevant historical record is spotty, noting that "the debates surrounding the Constitution focused much more upon theories of representation than upon the judiciary."[39] He proceeds to cite evidence from the Constitutional Convention in Philadelphia in which lawmakers stressed the importance of separation of powers and rejected attempts to "give judges a policy making role." In particular, he references the failed attempt to create a "council of revision," consisting of executive officials and members of the judiciary, with veto power over Congress.[40] While Bork's evidence supports the conclusion that

[35] READING LAW, *supra* note 7, at 83-85.
[36] *Id.*
[37] It is worth noting that in the same text Scalia cites as evidence of Blackstone's commitment to originalism, the English jurist stresses the importance of considering a statute's purpose and "spirit." In describing the proper approach to statutory interpretation, Blackstone writes, "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it." WILLIAM BLACKSTONE, 1723-1780 COMMENTARIES ON THE LAWS OF ENGLAND 58 (1962).
[38] TEMPTING OF AMERICA, *supra* note 7, at 151-155.
[39] *Id.*
[40] *Id.* at 153.

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framers wanted to insulate judges from politics, it does not support the conclusion that original understanding included an assumption that judges adopt originalism. Further, by relying on the individual statements of lawmakers at the Constitutional Convention, as well as rejected legislative proposals, as opposed to the common meaning of Art. III's text, Bork engages in a purposovist analysis to uncover original understanding.[41]

II. Contested History

One might conclude that Scalia, Bork, and Thomas' limited reliance on history implies the historical record does not support an originalist case for the method of interpretation. Or more significantly, one might conclude it implies the historical record supports an originalist case for another method of interpretation, such as living constitutionalism.[42] The historical record, however, is not so clear. Raul Berger is often cited for scholarship uncovering founding era support for originalism;[43] Berger argues the founders inherited a legal tradition that constrained judges to a "fixed standard" that "assured the Framers their design would be effectuated."[44] Berger relies upon 18th century English case law, as well as the writings of James Madison and Alexander Hamilton to support his claims.[45] Similarly, historian Johnathan O'Neill argues that

[41] Eskridge includes rejected legislative proposals and sponsor statements among the evidence typically considered in a purposovist analysis of legislation. He ranks rejected proposals, however, among the least reliable sources of evidence, below committee reports and sponsor statements. William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621 (1990). Bork's reliance on purposovist methods may reflect his reliance on "original intent" as opposed to "original meaning" in certain pieces of his writing.
[42] Living constitutionalism is a method of constitutional interpretation that assumes the Constitution is a "living" document, capable of "chang[ing] and adapt[ing] to new circumstances, without being formally amended." David A. Strauss, The Living Constitution 1 (2010). Those who employ living constitutionalism typically consider the text's purpose and the consequences of a particular interpretation, in addition to history, precedent, and Constitution's text. Breyer, *supra* note 11, at 2.
[43] Boyce, *supra* note 1, at 956.
[44] Raul Berger, Government by the Judiciary: The Transformation of the 14th Amendment 402-410 (1977).
[45] Berger cites the following quote by James Madison: "If the sense in which the Constitution was accepted and ratified by the Nation…be not the guide in expounding it, there can be not security for a consistent and stable government, more than for a faithful exercise of its powers." He also quotes Thomas Jefferson as saying, "our peculiar security is in the possession of a written constitution… let us not make it a blank paper by construction." *Id.* at 403-405.

"while [18th century] Americans occasionally consulted extrinsic sources, the usual practice, following Blackstone and the English inheritance, sought the originally intended meaning by examination of the constitutional text."[46]

Several authors, however, have been unable to substantiate such claims. Jack Rakove, for example, reviews founding era statements by Madison and Jefferson that demonstrate a wavering commitment to originalism, arguing the founders employed alternative modes of interpretation when such methods suited their political aims.[47] Boyce goes as far as to argue that the framers often rejected early forms of originalism in favor of non-originalist methods, such as "conventionalism," explaining that the "dominant approach" to constitutional interpretation in the 18th and early 19th century was "informed by traditional law and common-law and natural law principles."[48] Similar disputes surround Jonathan Gienapp's recent scholarship into the Constitution's early history. Gienapp argues the Constitution did not acquire a "fixed meaning" until decades after its ratification, citing disagreements among the framers about the Constitution's status as a written legal text subject to a specific type of interpretation.[49] William Baude argues that while Gienapp uncovers "important debates in which prominent people disagreed about the nature and status of the Constitution" his research does not disprove "the dominance of public meaning originalism" so much as it demonstrates disagreement about "established rules."[50]

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[46] O'NEILL, *supra* note 1, at 15. O'Neill concedes that while "interpreters were not unanimous about the content or proper application of intent…the idea that interpretation…could balance competing policy goals or 'update' the living Constitution to his view of contemporary requirements was almost never heard before the late nineteenth century."
[47] Jack N. Rakove, *The Original Intention of Original Understanding,* 13 CONST. COMMENTARY 159, 160 (1996).
[48] Boyce, *supra* note 2, at 960.
[49] *JONATHAN GIENAPP, THE SECOND CREATION: FIXING THE AMERICAN CONSTITUTION IN THE FOUNDING ERA 4-18* (2018).
[50] William Baude, *The Second Creation and Originalist Theory*, BALKANIZATION (Oct. 15, 2018) balkin.blogspot.com/2018/10/were-framers-originalists-and-does-it.

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While the historical record neither fully supports nor refutes an originalist argument for a theory of constitutional interpretation rooted in the text's public meaning, the authors' reliance on alternative modes of interpretation, in response, perhaps, to the inconclusive record, is significant.

III. SIGNIFICANCE

One might question whether it matters if originalism's proponents advance an originalist argument in favor of the method. As Bork notes,"[e]ven if evidence of what the founders thought about the judicial role were unavailable," originalism's many benefits—including its capacity to constrain judges from exceeding their constitutionally assigned role—outweigh the benefits of alternative interpretative approaches.[51] Scalia, Bork, and Thomas' failure to make an originalist case, however, is significant for three reasons: the authors call into question democratic consent for the interpretive method, suggest that relying on alternative methods may be necessary when the historical record is unclear, and imply that other methods of interpretation may be necessary to confer legitimacy to certain constitutional interpretations.

A. A Consent-Based Theory

As noted earlier, originalism's proponents argue use of the method is necessary, in large part, because the judiciary's authority to perform judicial review derives from the people's consent to be governed. Thus, Scalia and Thomas argue, when judges adapt the Constitution's meaning to reflect current values, they exceed the authority conferred to them.[52] In sum, "the

[51] TEMPTING OF AMERICA, *supra* note 7, at 154-155 (arguing that if originalism "were not common in the law…we would have to invent the approach of original understanding…[because] no other method of constitutional adjudication can confine courts to a defined sphere of authority and thus prevent them from assuming powers whose exercise alters…the design of the American public").
[52] *See, e.g., Original Intent and a Living Constitution*, *supra* note 7, at 2 (arguing that judges must look to original meaning "because it depends on consent, which is what the people agreed to on adoption); *How to Read the Constitution, supra* note 8, at 3 (stressing that "the framers structured the Constitution to assure that our national government be by the consent of the people" and that they did so by limiting each branch's powers).

people" did not agree to a constitution whose meaning would change over time. Originalism's unsettled historical basis, however, leaves open the possibility that "the people" did not consent to be governed by a text with fixed meaning. Gienapp's research, noted earlier, presents evidence to support this claim.[53] Such evidence, if generally accepted, would present a serious challenge to the argument that originalism must be adopted to ensure judges adhere to their constitutionally assigned role and perhaps explains why Scalia, Bork, and Thomas are reluctant to rely exclusively on such claims.

Scalia's understanding of originalism, however, might accommodate such a situation. Scalia argues judges may be afforded interpretative leeway where the Constitution is "*intentionally* vague," though one must prove the provision's public meaning was ambiguous "on the basis of textual or historical evidence."[54] As such, according to Scalia, evidence to suggest those who ratified the Constitution did not a agree to a specific interpretative method would be insufficient to allow judges to deviate from the public meaning of the text, absent evidence the Constitution was "intentionally vague" on the subject.

Notwithstanding Scalia's workaround, one might argue that even without clear evidence of consent, originalism's many advantages—including its compatibility with constitutional structure and capacity to keep judges' personal preferences at bay—remain intact. However, arguing that originalism is "preferable" as opposed to "required"—that originalism should be adopted because of its practical advantages, as opposed to its basis in the Constitution—concedes the value of alternative methods of interpretation, namely pragmatism or consequentialism. Moreover, reliance on pragmatism opens up the possibility that originalism's proponents are a

[53] *GIENAPP, supra* note 49, at 121-122 (stressing that "uncertainty over the content and applicability of common law rules of construction releveled…that it was simply unclear at the time of ratification which rule of interpretation would guide federal judges").
[54] *The Lesser Evil, supra* note 8, at 861-862.

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victim of their own critique: employing non-originalist modes that allow room for judges to "write their own preferences into the Constitution."[55] For example, one might argue that by adopting abstract pragmatic and structural arguments in favor of originalism, Scalia, Bork, and Thomas allowed room for personal preference in their analyses. Several scholars have raised the similar critique that choosing to employ originalism in the first place often involves a normative judgment.[56]

C. Historical Gaps & Legitimacy

Scalia, Bork, and Thomas' failure to rely on exclusively originalist arguments is also significant because it concedes a popular criticism of the model of interpretation: that it fails to provide adequate guidance in the instance the history surrounding the public meaning of a provision is unclear.[57] By considering abstract principles such as separation of powers and federalism and the practical implications of adopting different interpretative modes, the authors suggest judges may need to rely on more than text and history when neither provide clear guidance on the meaning of a constitutional phrase or provision. Curtis A. Bradley and Neil S. Seigal, argue, for example, that as originalism has become more popular, originalist judges have become "more receptive to accommodating various non-originalist materials," including post-

[55] *Judging*, *supra* note 8, at 6
[56] *See, e.g.,* David A. J. Richards, *Originalism without Foundations,* 65 N.Y.U. L. REV. 1373 (1990) (arguing that Bork's endorsement of originalism over "alternative positive models of constitutional interpretation" reflect his "personal interpretative views."), *Ronald Dworkin, The Forum of Principle, 56 N.Y.U. L. REV. 469, 498 (1981)* ("Arguing that in employing originalism, judges necessarily make "decisions of political morality" when they adopt "one conception of constitutional intention rather than another").
[57] *See, e.g., Tanner Lecture on Human Values, supra* note 8, at 3 (stressing that historical uncertainties "often fail to provide objective guidance"), Richard H. Fallon, Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. I189, 1189-9o (1987) (arguing that the relevant history is often unclear enough to account for multiple possible interpretations, allowing judges to make decisions on policy grounds).

founding historical practice to accommodate for situations in which "original learning in unknown or unknowable." [58]

By relying on non-originalist arguments to make their case, Scalia, Bork, and Thomas also concede that such arguments may be necessary to garner public support for constitutional interpretations, especially when the history surrounding a provision is unclear. To make their case, to the legal community and public at large, Scalia, Thomas, and Bork argue originalism is not just required by the Constitution, but likely to result in better decisions,[59] reduce the politicization of the courts, limit the risk that traditional rights will be contracted,[60] and prevent judges from legislating from the bench.[61] While one might argue that public approval should not influence constitutional interpretation, both Scalia and Bork make appeals to legitimacy in their calls to adopt originalism. The authors contend that originalism is especially attractive because of its capacity to confer legitimacy to constitutional interpretations by grounding judges' interpretations in the text.[62] Thus, in relying on alternative methods in their personal scholarly work, the authors suggest original meaning alone may be insufficient to convince the public of the need to adopt originalism on the bench.

III. Counterarguments

One could also argue that the conclusion that Scalia, Bork, and Thomas fail to make an originalist argument is overstated. As described above, Scalia, Bork, and Thomas rely in part on structural arguments, stressing that originalism is the method of interpretation most compatible with the structure of government envisioned by the Constitution. Some originalists argue that

[58] Curtis A. Bradley & Neil S. Siegel*, Historical Gloss, Madisonian Liquidation, and the Originalism Debate,* 106 VA. L. REV. 1 (2020).
[59] *The Lesser Evil*, *supra* note 8, at 863-864.
[60] The Tempting of America, note 8, at 4-10.
[61] *The Lesser Evil*, *supra* note 8, at 865-66.
[62] *The Uphill Fight, supra* note 8, at 3-4*; How to Read the Constitution, supra* note 8, at 2.

constitutional structure, alongside text and history, plays an important role in originalist analyses. Bork, for example, stresses that the "framer's intent" should be understood to include a combination of text, structure, and history of the Constitution."[63] Further, Professor Keith Whittington argues originalists often employ "arguments grounded in structures or values implicit in….the constitutional scheme" to clarify constitutional rules.[64] As such, one could argue that Scalia, Bork, and Thomas are not making concessions about the value of alternative interpretive methods, but rather employing arguments rooted in the Constitutional design to supplement an unclear original meaning.

This argument, however, fails to address two features of the authors' writings on the subject. First, the critique does not account for the authors' reliance on consequentialist arguments to advance originalism's cause. Even if Scalia, Thomas, and Bork, made structural arguments to advance a textual reading, the authors devote near equal attention to the practical advantages of originalism and the dangers of its alternatives.[65] Second, the authors do not rely on structural arguments to *support* an originalist interpretation. Often considered a form of textualism,[66] originalism consults the text "as the first piece of evidence" in an analysis.[67] Scalia, Bork, and Thomas, however, do not "begin with the text" and use constitutional structure to fortify their reading. Rather, the authors often give structural principles self-sufficient weight.[68] Scalia, for example, argues that originalism alone can justify judicial review, by ensuring judges

[63] Robert H. Bork, *Original Intent: The Only Legitimate Basis for Constitutional Decision Making*, JUDGES J., 15 (1987).
[64] Keith E. Whittington*, Originalism: A Critical Introduction,* 82 FORDHAM L. REV. 375, 390 (2013).
[65] *See* discussion *supra* Section I.A.
[66] *Id.* at 389 (noting that both Scalia and Lawrence B. Solum "characterize originalism as a form of textualism").
[67] *Id.* at 389.
[68] Thomas, more so than Scalia and Bork, refers to specific constitutional provisions. For example, in arguing that judges must be impartial and separated from the political process, he refers to Article III, Section 1's good behavior and irreducible salary provisions. Even here, however, Thomas does not quote or discuss the specific constitutional text. *How to Read the Constitution, supra* note 8, at 4.

adhere to the structure of government envisioned by the Constitution, without reference to a Constitutional provision.[69] Similarly, Bork argues the Constitution creates a system of democratic accountability that would be rendered meaningless if unelected judges are allowed to legislate from the bench, without tying his analysis to a particular article or provision.[70] Whittington stresses that constitutional design should only be relied upon to advance an original reading of the text, as it lacks "independent force" in an originalist analysis.[71]

IV. CONCLUSION

Scalia, Bork, and Thomas are undoubtedly responsible for originalism's growth in recent years.[72] By portraying originalism as not just the most legitimate mode of constitutional interpretation, but also the method most likely to constrain judges and reduce impartiality, the authors have convinced members of the public and judiciary alike of its advantages. In advancing originalism's cause, however, the authors employ methods of interpretation they often criticize. In doing so, they not only leave room for policy preferences to shape their analyses but concede several of originalism's central weaknesses. By relying on broad abstract constitutional principles and consequentialist arguments, Scalia, Bork, and Thomas intimate that originalism may provide insufficient guidance when the history surrounding constitutional text is unclear and imply that alternative methods of interpretation may be necessary to confer legitimacy on particular interpretations. Further, the authors' failure to rely on an originalist argument alone raises questions about the historical record regarding originalism's popularity during the founding. This, in turn, casts doubt on originalism's central advantage: its status as the only method of interpretation consented to by those who ratified the Constitution.

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[69] *The Lesser Evil*, *supra* note 8, at 854-855.
[70] THE TEMPTING OF AMERICA, *supra* note 8, at 4-5.
[71] Whittington, *supra* note 60, at 390.
[72] Eric E. Posner, *Why Originalism is So Popular,* THE NEW REPUBLIC (2011).

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June 19, 2023

The Honorable Jamar K. Walker
U.S. District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

Enclosed please find an application for a clerkship in your chambers for the 2024-25 term. I am a third-year student at Northwestern Pritzker School of Law and will graduate in May 2024. A clerkship in your chambers would provide an invaluable opportunity to observe a range of litigation strategies, learn from an experienced lawyer, and broaden my understanding of judicial decision-making in preparation for a career as a litigator. I am also excited for the opportunity to live and work in Virginia, as I would be closer to family who lives there.

My law school and work experience has prepared me to make a meaningful contribution to your chambers and the work of the court. As a summer associate at Weil, Gotshal & Manges, I am spending my summer rotating through the litigation and restructuring departments. This has given me insight into high-stakes complex commercial and securities matters. Another formative experience was my internship with the Federal Defender Program for the Northern District of Illinois. Among other tasks, I drafted motions and sections of briefs, authored research memos, prepared correspondence to send to clients, and tracked what charges were considered crimes of violence within the Northern District of Illinois.

My application includes a resume, law transcript, and writing sample, which is a portion of a brief I wrote as part of Northwestern's Julius H. Miner Moot Court competition. Letters of recommendation are provided from:

> Professor Erin Delaney, Northwestern Pritzker School of Law
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> Daniel J. Hesler, Staff Attorney, Federal Defender Program for the Northern District of Illinois
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I would welcome the opportunity to interview with you and discuss my qualifications and interest in the position. Thank you for your consideration.

Respectfully,

Christopher Scheren